

1-1 By: Fraser S.B. No. 5
1-2 (In the Senate - Filed July 21, 2005; July 21, 2005, read
1-3 first time and referred to Committee on Business and Commerce;
1-4 July 21, 2005, reported favorably by the following vote: Yeas 6,
1-5 Nays 0; July 21, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to furthering competition in the communications industry.

1-9 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-10 SECTION 1. Section 33.001, Utilities Code, is amended to
1-11 read as follows:

1-12 Sec. 33.001. MUNICIPAL JURISDICTION. (a) To provide fair,
1-13 just, and reasonable rates and adequate and efficient services, the
1-14 governing body of a municipality has exclusive original
1-15 jurisdiction over the rates, operations, and services of an
1-16 electric utility in areas in the municipality, subject to the
1-17 limitations imposed by this title.

1-18 (b) Notwithstanding Subsection (a), the governing body of a
1-19 municipality shall not have jurisdiction over the BPL system, BPL
1-20 services, telecommunications using BPL services, or the rates,
1-21 operations, or services of the electric utility or transmission and
1-22 distribution utility to the extent that such rates, operations, or
1-23 services are related, wholly or partly, to the construction,
1-24 maintenance, or operation of a BPL system used to provide BPL
1-25 services to affiliated or unaffiliated entities.

1-26 SECTION 2. Subtitle B, Title 2, Utilities Code, is amended
1-27 by adding Chapter 43 to read as follows:

1-28 CHAPTER 43. USE OF ELECTRIC DELIVERY SYSTEM FOR ACCESS TO BROADBAND
1-29 AND OTHER ENHANCED SERVICES, INCLUDING COMMUNICATIONS

1-30 SUBCHAPTER A. GENERAL PROVISIONS

1-31 Sec. 43.001. LEGISLATIVE FINDINGS. (a) The legislature
1-32 finds that broadband over power lines, also known as BPL, is an
1-33 emerging technology platform that offers a means of providing
1-34 broadband services to reach homes and businesses. BPL services can
1-35 also be used to enhance existing electric delivery systems, which
1-36 can result in improved service and reliability for electric
1-37 customers.

1-38 (b) The legislature finds that access to quality, high speed
1-39 broadband services is important to this state. BPL deployment in
1-40 Texas has the potential to extend broadband service to customers
1-41 where broadband access is currently not available and may provide
1-42 an additional option for existing broadband consumers in Texas,
1-43 resulting in a more competitive market for broadband services. The
1-44 legislature further finds that BPL development in Texas is fully
1-45 dependent upon the participation of electric utilities in this
1-46 state that own and operate power lines and related facilities that
1-47 are necessary for the construction of BPL systems and the provision
1-48 of BPL services.

1-49 (c) Consistent with the goal of increasing options for
1-50 telecommunications in this state, the legislature finds that it is
1-51 in the public interest to encourage the deployment of BPL by
1-52 permitting affiliates of the electric utility, or permitting
1-53 unaffiliated entities, to own or operate all or a portion of such
1-54 BPL systems. The purpose of this chapter is to provide the
1-55 appropriate framework to support the deployment of BPL.

1-56 (d) The legislature finds that an electric utility may
1-57 choose to implement BPL under the procedures set forth in this
1-58 chapter, but is not required to do so. The electric utility shall
1-59 have the right to decide, in its sole discretion, whether to
1-60 implement BPL and may not be penalized for deciding to implement or
1-61 not to implement BPL.

1-62 Sec. 43.002. APPLICABILITY. (a) This chapter applies to
1-63 an electric utility whether or not the electric utility is offering
1-64 customer choice under Chapter 39.

2-1 (b) If there is a conflict between the specific provisions
 2-2 of this chapter and any other provisions of this title, the
 2-3 provisions of this chapter control.

2-4 (c) No provision of this title shall impose an obligation on
 2-5 an electric utility to implement BPL, to provide broadband
 2-6 services, or to allow others to install BPL facilities or use the
 2-7 electric utility's facilities for the provision of broadband
 2-8 services.

2-9 Sec. 43.003. DEFINITIONS. In this chapter:

2-10 (1) "BPL," "broadband over power lines," and "BPL
 2-11 services" mean the provision of broadband services over electric
 2-12 power lines and related facilities, whether above ground or in
 2-13 underground conduit.

2-14 (2) "BPL access" means the ability to access broadband
 2-15 services via a BPL operator or BPL Internet service provider.

2-16 (3) "BPL operator" means an entity that owns or
 2-17 operates a BPL system on the electric power lines and related
 2-18 facilities of an electric utility.

2-19 (4) "BPL Internet service provider" and "BPL ISP" mean
 2-20 an entity that provides Internet services to others on a wholesale
 2-21 basis or to end-use customers on a retail basis.

2-22 (5) "BPL system" means the materials, equipment, and
 2-23 other facilities installed on electric utility property to
 2-24 facilitate the provision of BPL services.

2-25 (6) "BPL electric utility applications" means
 2-26 services and technologies that are used and useful and designed to
 2-27 improve the operational performance and service reliability of an
 2-28 electric utility including, but not limited to, automated meter
 2-29 reading, real time system monitoring and meter control, remote
 2-30 service control, outage detection and restoration, predictive
 2-31 maintenance and diagnostics, and monitoring and enhancement of
 2-32 power quality.

2-33 (7) "Electric delivery system" means the power lines
 2-34 and related transmission and distribution facilities used by an
 2-35 electric utility to deliver electric energy.

2-36 (8) "Electric utility" shall include an electric
 2-37 utility and a transmission and distribution utility as defined in
 2-38 Section 31.002(6) or (19).

2-39 [Sections 43.004-43.050 reserved for expansion]

2-40 SUBCHAPTER B. DEVELOPMENT OF BPL SYSTEMS

2-41 Sec. 43.051. AUTHORIZATION FOR BPL SYSTEM. An affiliate of
 2-42 an electric utility or a person unaffiliated with an electric
 2-43 utility may own, construct, maintain, and operate a BPL system and
 2-44 provide BPL services on an electric utility's electric delivery
 2-45 system consistent with the requirements of this chapter. Nothing
 2-46 in this chapter shall prohibit an entity defined in Section
 2-47 11.003(9) from providing BPL service or owning and operating a BPL
 2-48 system. Nothing in this chapter shall prohibit an electric utility
 2-49 from providing construction or maintenance services to a BPL
 2-50 operator or BPL ISP provided that the costs of these services are
 2-51 properly accounted for between the electric utility and the BPL
 2-52 operator or BPL ISP.

2-53 Sec. 43.052. OWNERSHIP AND OPERATION OF BPL SYSTEM.

2-54 (a) An electric utility may elect to:

2-55 (1) allow an affiliate to own or operate a BPL system
 2-56 on the utility's electric delivery system;

2-57 (2) allow an unaffiliated entity to own or operate a
 2-58 BPL system on the electric utility's electric delivery system; or

2-59 (3) allow an affiliate or unaffiliated entity to
 2-60 provide Internet service over a BPL system.

2-61 (b) The BPL operator and the electric utility shall
 2-62 determine what BPL Internet service providers may have access to
 2-63 broadband capacity on the BPL system.

2-64 Sec. 43.053. FEES AND CHARGES. (a) An electric utility
 2-65 that allows an affiliate or an unaffiliated entity to own a BPL
 2-66 system on the electric utility's electric delivery system shall
 2-67 charge the owner of the BPL system for the use of the electric
 2-68 utility's electric delivery system.

2-69 (b) An electric utility may pay a BPL owner, a BPL operator,

3-1 or a BPL ISP for the use of the BPL system required to operate BPL
 3-2 utility applications.

3-3 (c) If all or part of a BPL system is installed on poles or
 3-4 other structures of a telecommunications utility as that term is
 3-5 defined in Section 51.002, the owner of the BPL system shall be
 3-6 required to pay the telecommunications utility an annual fee
 3-7 consistent with the usual and customary charges for access to the
 3-8 space occupied by that portion of the BPL system so installed.

3-9 (d) Notwithstanding Subsections (a)-(c):
 3-10 (1) an electric utility may not charge an affiliate
 3-11 under this section an amount less than the electric utility would
 3-12 charge an unaffiliated entity for the same item or class of items;

3-13 (2) an electric utility may not pay an affiliate under
 3-14 this section an amount more than the affiliate would charge an
 3-15 unaffiliated entity for the same item or class of items; and

3-16 (3) an electric utility or an affiliate of an electric
 3-17 utility may not discriminate against a retail electric provider
 3-18 that is not affiliated with the utility in the terms or availability
 3-19 of BPL services.

3-20 Sec. 43.054. NO ADDITIONAL EASEMENTS OR CONSIDERATION
 3-21 REQUIRED. Because BPL systems provide benefits to electric
 3-22 delivery systems, the installation of a BPL system on an electric
 3-23 delivery system shall not require the electric utility or the owner
 3-24 of the BPL system or an entity defined in Section 11.003(9) to
 3-25 obtain or expand easements or other rights-of-way for the BPL
 3-26 system or to give additional consideration as a result of the
 3-27 installation or the operation of a BPL system. For purposes of this
 3-28 section, installation of a BPL system shall be deemed to be
 3-29 consistent with installation of an electric delivery system.

3-30 Sec. 43.055. RELIABILITY OF ELECTRIC SYSTEMS MAINTAINED.
 3-31 An electric utility that allows the installation and operation of a
 3-32 BPL system on its electric delivery system shall employ all
 3-33 reasonable measures to ensure that the operation of the BPL system
 3-34 does not interfere with or diminish the reliability of the
 3-35 utility's electric delivery system. Should a disruption in the
 3-36 provision of electric service occur, the electric utility shall be
 3-37 governed by the terms and conditions of the retail electric
 3-38 delivery service tariff. At all times, the provision of broadband
 3-39 services shall be secondary to the reliable provision of electric
 3-40 delivery services.

3-41 [Sections 43.056-43.100 reserved for expansion]

3-42 SUBCHAPTER C. IMPLEMENTATION OF BPL SYSTEM BY
 3-43 ELECTRIC UTILITY

3-44 Sec. 43.101. PARTICIPATION BY ELECTRIC UTILITY. (a) An
 3-45 electric utility, through an affiliate or through an unaffiliated
 3-46 entity, may elect to install and operate a BPL system on some or all
 3-47 of its electric delivery system in any part or all of its
 3-48 certificated service area.

3-49 (b) The installation, operation, and use of a BPL system and
 3-50 the provision of BPL services shall not be regulated by any state
 3-51 agency, a municipality, or local government other than as provided
 3-52 for in this chapter.

3-53 (c) The commission or a state or local government or a
 3-54 regulatory or quasi-governmental or a quasi-regulatory authority
 3-55 may not:

3-56 (1) require an electric utility, either through an
 3-57 affiliate or an unaffiliated entity, to install a BPL system on its
 3-58 power lines or offer BPL services in all or any part of the electric
 3-59 utility's certificated service area;

3-60 (2) require an electric utility to allow others to
 3-61 install a BPL system on the utility's electric delivery system in
 3-62 any part or all of the electric utility's certificated service
 3-63 area; or

3-64 (3) prohibit an electric utility from having an
 3-65 affiliate or unaffiliated entity install a BPL system or offering
 3-66 BPL services in any part or all of the electric utility's
 3-67 certificated service area.

3-68 (d) If a municipality or local government is already
 3-69 collecting a charge or fee from the electric utility for the use of

4-1 the public rights-of-way for the delivery of electricity to retail
 4-2 electric customers, the municipality or local government is
 4-3 prohibited from requiring a franchise or an amendment to a
 4-4 franchise or from requiring a charge, fee, or tax from any entity
 4-5 for use of the public rights-of-way for a BPL system.

4-6 (e) The state or a municipality may impose a charge on the
 4-7 provision of BPL services, but the charge may not be greater than
 4-8 the lowest charge that the state or municipality imposes on other
 4-9 providers of broadband services for use of the public rights-of-way
 4-10 in its respective jurisdiction.

4-11 Sec. 43.102. COST RECOVERY FOR DEPLOYMENT OF BPL AND
 4-12 UTILITY APPLICATIONS. (a) Where an electric utility permits the
 4-13 installation of a BPL system on its electric delivery system under
 4-14 Section 43.052(a), the electric utility's investment in that BPL
 4-15 system to directly support the BPL electric utility applications
 4-16 and other BPL services consumed by the electric utility that are
 4-17 used and useful in providing electric utility service shall be
 4-18 eligible for inclusion in the electric utility's invested capital,
 4-19 and any fees or operating expenses that are reasonable and
 4-20 necessary shall be eligible for inclusion as operating expenses for
 4-21 purposes of any proceeding under Chapter 36. The invested capital
 4-22 and expenses described in this section must be allocated to the
 4-23 customer classes directly receiving the services.

4-24 (b) In any proceeding under Chapter 36, just and reasonable
 4-25 charges for the use of the electric utility's electric delivery
 4-26 system by a BPL owner or operator shall be limited to the usual and
 4-27 customary pole attachment charges paid to the electric utility for
 4-28 comparable space by cable television operators.

4-29 (c) The revenues of an affiliated BPL operator or an
 4-30 affiliated BPL ISP shall not be deemed the revenues of an electric
 4-31 utility for purposes of setting rates under Chapter 36.

4-32 [Sections 43.103-43.150 reserved for expansion]

4-33 SUBCHAPTER D. MISCELLANEOUS PROVISIONS

4-34 Sec. 43.151. AFFILIATES OF ELECTRIC UTILITY. (a) Subject
 4-35 to the limitations of this chapter, an electric utility may have a
 4-36 full or partial ownership interest in a BPL operator or a BPL ISP.
 4-37 Whether a BPL operator or a BPL ISP is an affiliate of the electric
 4-38 utility shall be determined under Section 11.003(2) or Section
 4-39 11.006.

4-40 (b) Neither a BPL operator nor a BPL ISP shall be considered
 4-41 a "competitive affiliate" of an electric utility as that term is
 4-42 defined in Section 39.157.

4-43 Sec. 43.152. COMPLIANCE WITH FEDERAL LAW. BPL operators
 4-44 shall comply with all applicable federal laws, including those
 4-45 protecting licensed spectrum users from interference by BPL
 4-46 systems. The operator of a radio frequency device shall be required
 4-47 to cease operating the device upon notification by a Federal
 4-48 Communications Commission or Public Utilities Commission
 4-49 representative that the device is causing harmful interference.
 4-50 Operation shall not resume until the condition causing the harmful
 4-51 interference has been corrected.

4-52 SECTION 3. Section 52.155, Utilities Code, is amended by
 4-53 amending Subsection (a) and adding Subsection (c) to read as
 4-54 follows:

4-55 (a) A telecommunications utility that holds a certificate
 4-56 of operating authority or a service provider certificate of
 4-57 operating authority may not charge a higher amount for originating
 4-58 or terminating intrastate switched access than the prevailing rates
 4-59 charged by the holder of the certificate of convenience and
 4-60 necessity or the holder of a certificate of operating authority
 4-61 issued under Chapter 65 in whose territory the call originated or
 4-62 terminated unless:

4-63 (1) the commission specifically approves the higher
 4-64 rate; or

4-65 (2) subject to commission review, the
 4-66 telecommunications utility establishes statewide average composite
 4-67 originating and terminating intrastate switched access rates based
 4-68 on a reasonable approximation of traffic originating and
 4-69 terminating between all holders of certificates of convenience and

5-1 necessity in this state.

5-2 (c) Notwithstanding Subsection (a), Chapter 65 governs the
 5-3 switched access rates of a company that holds a certificate of
 5-4 operating authority issued under Chapter 65.

5-5 SECTION 4. Subchapter D, Chapter 52, Utilities Code, is
 5-6 amended by adding Section 52.156 to read as follows:

5-7 Sec. 52.156. RETAIL RATES, TERMS, AND CONDITIONS. A
 5-8 telecommunications utility may not:

5-9 (1) establish a retail rate, term, or condition that
 5-10 is anticompetitive or unreasonably preferential, prejudicial, or
 5-11 discriminatory; or

5-12 (2) engage in predatory pricing or attempt to engage
 5-13 in predatory pricing.

5-14 SECTION 5. Section 54.202, Utilities Code, is amended by
 5-15 adding Subsection (c) to read as follows:

5-16 (c) This section may not be construed to prevent a
 5-17 municipally owned utility from providing to its energy customers,
 5-18 either directly or indirectly, any energy related service involving
 5-19 the transfer or receipt of information or data concerning the use,
 5-20 measurement, monitoring, or management of energy utility services
 5-21 provided by the municipally owned utility, including services such
 5-22 as load management or automated meter reading.

5-23 SECTION 6. Subsections (a), (b), and (c), Section 54.204,
 5-24 Utilities Code, are amended to read as follows:

5-25 (a) Notwithstanding Section 14.008, a municipality or a
 5-26 municipally owned utility may not discriminate against a
 5-27 certificated telecommunications provider [~~telecommunications~~
 5-28 utility] regarding:

5-29 (1) the authorization or placement of a
 5-30 [~~telecommunications~~] facility in a public right-of-way;

5-31 (2) access to a building; or

5-32 (3) a municipal utility pole attachment rate or term[~~,~~
 5-33 ~~to the extent not addressed by federal law].~~

5-34 (b) In granting consent, a franchise, or a permit for the
 5-35 use of a public street, alley, or right-of-way within its municipal
 5-36 boundaries, a municipality or municipally owned utility may not
 5-37 discriminate in favor of or against a certificated
 5-38 telecommunications provider [~~telecommunications utility that holds~~
 5-39 ~~or has applied for a certificate of convenience and necessity, a~~
 5-40 ~~certificate of operating authority, or a service provider~~
 5-41 ~~certificate of operating authority] regarding:~~

5-42 (1) municipal utility pole attachment or underground
 5-43 conduit rates or terms[~~,~~ ~~to the extent not addressed by federal~~
 5-44 ~~law]; or~~

5-45 (2) the authorization, placement, replacement, or
 5-46 removal of a [~~telecommunications~~] facility in a public right-of-way
 5-47 and the reasonable compensation for the authorization, placement,
 5-48 replacement, or removal regardless of whether the compensation is
 5-49 in the form of:

5-50 (A) money;

5-51 (B) services;

5-52 (C) use of facilities; or

5-53 (D) another kind of consideration.

5-54 (c) A municipality or a municipally owned [Notwithstanding
 5-55 Subsection (b)(1), a municipal] utility may not charge any entity,
 5-56 regardless of the nature of the services provided by that entity, a
 5-57 pole attachment rate or underground conduit rate that exceeds the
 5-58 fee the municipality or municipally owned utility would be
 5-59 permitted to charge under rules adopted by the Federal
 5-60 Communications Commission under 47 U.S.C. Section 224(e) if the
 5-61 municipality's or municipally owned utility's rates were regulated
 5-62 under federal law and the rules of the Federal Communications
 5-63 Commission. In addition, not later than September 1, 2006, a
 5-64 municipality or municipally owned utility shall charge a single,
 5-65 uniform pole attachment or underground conduit rate to all entities
 5-66 that are not affiliated with the municipality or municipally owned
 5-67 utility regardless of the services carried over the networks
 5-68 attached to the poles or underground conduit.

5-69 SECTION 7. Section 54.251, Utilities Code, is amended by

6-1 amending Subsection (b) and adding Subsection (c) to read as
6-2 follows:

6-3 (b) Except as specifically determined otherwise by the
6-4 commission under this subchapter or Subchapter G, the holder of a
6-5 certificate of convenience and necessity, or the holder of a
6-6 certificate of operating authority issued under Chapter 65, for an
6-7 area has the obligations of a provider of last resort regardless of
6-8 whether another provider has a certificate of operating authority
6-9 or service provider certificate of operating authority for that
6-10 area.

6-11 (c) A certificate holder may meet the holder's provider of
6-12 last resort obligations using any available technology.
6-13 Notwithstanding any provision of Chapter 56, the commission may
6-14 adjust disbursements from the universal service fund to companies
6-15 using technologies other than traditional wireline or landline
6-16 technologies to meet provider of last resort obligations. As
6-17 determined by the commission, the certificate holder shall meet
6-18 minimum quality of service standards, including standards for 911
6-19 service, comparable to those established for traditional wireline
6-20 or landline technologies and shall offer services at a price
6-21 comparable to the monthly service charge for comparable services in
6-22 that exchange or the provider's nearest exchange.

6-23 SECTION 8. Subchapter G, Chapter 54, Utilities Code, is
6-24 amended by adding Section 54.3015 to read as follows:

6-25 Sec. 54.3015. APPLICABILITY OF SUBCHAPTER. This subchapter
6-26 applies to a holder of a certificate of operating authority issued
6-27 under Chapter 65 in the same manner and to the same extent this
6-28 subchapter applies to a holder of a certificate of convenience and
6-29 necessity.

6-30 SECTION 9. Section 55.015, Utilities Code, is amended by
6-31 amending Subsections (a), (c), and (d) and adding Subsections
6-32 (b-1), (d-1), and (d-2) to read as follows:

6-33 (a) The commission shall adopt rules prohibiting a
6-34 certificated provider of local exchange telephone service
6-35 [~~telecommunications provider~~] from discontinuing basic network
6-36 services listed in Section 58.051 [~~local exchange telephone~~
6-37 service] to a consumer who receives lifeline service because of
6-38 nonpayment by the consumer of charges for other services billed by
6-39 the provider, including interexchange telecommunications [~~long~~
6-40 distance] service.

6-41 (b-1) The commission shall adopt rules requiring
6-42 certificated providers of local exchange telephone service to
6-43 implement procedures to ensure that all consumers are clearly
6-44 informed both orally and in writing of the existence of the lifeline
6-45 service program when they request or initiate service or change
6-46 service locations or providers. On or before June 1, 2006, the
6-47 commission shall enter into a memorandum of understanding with the
6-48 Health and Human Services Commission, and, to the maximum extent
6-49 feasible, housing authorities in the principal cities of each
6-50 metropolitan statistical area, to improve enrollment rates in the
6-51 lifeline service program.

6-52 (c) A certificated provider of local exchange telephone
6-53 service [~~telecommunications provider~~] may block a lifeline service
6-54 participant's access to all interexchange telecommunications [~~long~~
6-55 distance] service except toll-free numbers when the participant
6-56 owes an outstanding amount for that service. The provider
6-57 [~~telecommunications provider~~] shall remove the block without
6-58 additional cost to the participant on payment of the outstanding
6-59 amount.

6-60 (d) A certificated provider of local exchange telephone
6-61 service [~~telecommunications provider~~] shall offer a consumer who
6-62 applies for or receives lifeline service the option of blocking all
6-63 toll calls or, if technically capable, placing a limit on the amount
6-64 of toll calls. The provider may not charge the consumer an
6-65 administrative charge or other additional amount for the blocking
6-66 service.

6-67 (d-1) A certificated provider of local exchange telephone
6-68 service shall provide access to lifeline service to a customer
6-69 whose income is not more than 150 percent of the applicable income

7-1 level established by the federal poverty guidelines or in whose
 7-2 household resides a person who receives or has a child who receives:

- 7-3 (1) Medicaid;
- 7-4 (2) food stamps;
- 7-5 (3) Supplemental Security Income;
- 7-6 (4) federal public housing assistance;
- 7-7 (5) Low Income Home Energy Assistance Program (LIHEAP)
 7-8 assistance; or
- 7-9 (6) health benefits coverage under the state child
 7-10 health plan under Chapter 62, Health and Safety Code.

7-11 (d-2) A certificated provider of local exchange telephone
 7-12 service shall provide consumers who apply for or receive lifeline
 7-13 service access to available vertical services or custom calling
 7-14 features, including caller ID, call waiting, and call blocking, at
 7-15 the same price as other consumers. Lifeline discounts shall only
 7-16 apply to that portion of the bill that is for basic network service.

7-17 SECTION 10. Subchapter H, Chapter 55, Utilities Code, is
 7-18 amended by adding Section 55.1735 to read as follows:

7-19 Sec. 55.1735. CHARGE FOR PAY PHONE ACCESS LINE. The charge
 7-20 or surcharge a local exchange company imposes for an access line
 7-21 used to provide pay telephone service in an exchange may not exceed
 7-22 the amount of the charge or surcharge the company imposes for an
 7-23 access line used for regular business purposes in that exchange.

7-24 SECTION 11. Section 56.021, Utilities Code, is amended to
 7-25 read as follows:

7-26 Sec. 56.021. UNIVERSAL SERVICE FUND ESTABLISHED. The
 7-27 commission shall adopt and enforce rules requiring local exchange
 7-28 companies to establish a universal service fund to:

7-29 (1) assist telecommunications providers in providing
 7-30 basic local telecommunications service at reasonable rates in high
 7-31 cost rural areas;

7-32 (2) reimburse the telecommunications carrier that
 7-33 provides the statewide telecommunications relay access service
 7-34 under Subchapter D;

7-35 (3) finance the specialized telecommunications
 7-36 assistance program established under Subchapter E;

7-37 (4) reimburse the department, the Texas Commission for
 7-38 the Deaf and Hard of Hearing, and the commission for costs incurred
 7-39 in implementing this chapter and Chapter 57;

7-40 (5) reimburse a telecommunications carrier providing
 7-41 lifeline service as provided by 47 C.F.R. Part 54, Subpart E, as
 7-42 amended;

7-43 (6) finance the implementation and administration of
 7-44 an integrated eligibility process created under Section 17.007 for
 7-45 customer service discounts relating to telecommunications
 7-46 services, including outreach expenses the commission determines
 7-47 are reasonable and necessary;

7-48 (7) reimburse a designated provider under Subchapter
 7-49 F; ~~and~~

7-50 (8) reimburse a successor utility under Subchapter G;
 7-51 and

7-52 (9) finance the program established under Subchapter
 7-53 H.

7-54 SECTION 12. Subsection (a), Section 56.025, Utilities Code,
 7-55 is amended to read as follows:

7-56 (a) In addition to the authority provided by Section 56.021,
 7-57 for each local exchange company that serves fewer than 31,000 [~~five~~
 7-58 ~~million~~] access lines and each cooperative, the commission:

7-59 (1) may adopt a mechanism necessary to maintain
 7-60 reasonable rates for local exchange telephone service; and

7-61 (2) shall adopt rules to expand the universal service
 7-62 fund in the circumstances prescribed by this section.

7-63 SECTION 13. Section 56.026, Utilities Code, is amended by
 7-64 adding Subsection (e) to read as follows:

7-65 (e) This subsection and Subsections (c) and (d) expire
 7-66 August 31, 2007.

7-67 SECTION 14. Subchapter B, Chapter 56, Utilities Code, is
 7-68 amended by adding Sections 56.029, 56.030, and 56.031 to read as
 7-69 follows:

8-1 Sec. 56.029. UNIVERSAL SERVICE FUND STUDY; ATTESTATION
 8-2 REQUIREMENT. (a) The commission shall conduct a review and
 8-3 evaluation of whether the universal service fund accomplishes the
 8-4 fund's purposes as prescribed by Section 56.021 and the
 8-5 commission's final orders issued in Docket No. 18515 and Docket No.
 8-6 18516. The evaluation shall determine whether the fund's purposes
 8-7 have been sufficiently achieved, whether the fund should be
 8-8 abolished or phased out, whether the fund should be brought within
 8-9 the state treasury, and whether the entities receiving those funds
 8-10 are spending the money for its intended purposes. The evaluation
 8-11 must include a forward-looking, comprehensive assessment of the
 8-12 appropriate use of the money in the fund and the manner in which
 8-13 that money is collected and disbursed.

8-14 (b) Not later than January 1, 2006, the commission shall
 8-15 require telecommunications providers receiving disbursements under
 8-16 the universal service fund to provide to the commission the
 8-17 information that the commission determines is necessary to
 8-18 discharge the commission's duties under this section, including
 8-19 information necessary to review and evaluate how money is collected
 8-20 for the universal service fund and expended.

8-21 (c) Information provided under Subsection (b) is
 8-22 confidential and is not subject to disclosure under Chapter 552,
 8-23 Government Code.

8-24 (d) The commission may classify telecommunications
 8-25 providers as the commission considers appropriate for efficiency
 8-26 and may permit providers to share the cost of developing
 8-27 information the commission determines is necessary to discharge the
 8-28 commission's responsibilities under this section.

8-29 (e) Not later than January 5, 2007, the commission shall
 8-30 deliver to the legislature a report for the legislature's revision
 8-31 and approval on the results of the review and evaluation. The
 8-32 report must:

8-33 (1) include recommendations that are consistent with
 8-34 the policies provided by this title;

8-35 (2) include the commission's assessment of the
 8-36 universal service fund, including:

8-37 (A) how the money in the fund should be
 8-38 collected;

8-39 (B) how the money in the fund should be disbursed
 8-40 and the purposes for which the money should be used by the
 8-41 telecommunications provider receiving the money; and

8-42 (C) any recommendations the commission has in
 8-43 relation to accountability for use of the money in the fund,
 8-44 including the usefulness of the attestation required by Subsection
 8-45 (g); and

8-46 (3) include recommendations that ensure that a
 8-47 telecommunications provider's support from the universal service
 8-48 fund for a geographic area is consistent with Section 56.021 and the
 8-49 commission's final orders issued in Docket No. 18515 and Docket No.
 8-50 18516.

8-51 (f) The evaluation shall determine whether the fund's
 8-52 purposes have been sufficiently achieved, whether the fund should
 8-53 be abolished or phased out, whether the fund should be brought
 8-54 within the state treasury, and whether the entities receiving those
 8-55 funds are spending the money for its intended purposes.

8-56 (g) Not later than December 31, 2005, each
 8-57 telecommunications provider receiving universal service fund money
 8-58 shall file with the commission an affidavit attesting that the
 8-59 money from the fund has been used in a manner that is consistent
 8-60 with the purposes provided by Section 56.021 and the commission's
 8-61 final orders issued in Docket No. 18515 and Docket No. 18516.

8-62 (h) In addition to the study required by this section, the
 8-63 commission shall compile information necessary to determine
 8-64 whether the current funding mechanism for the universal service
 8-65 fund will be adequate in the future to sustain the purposes for
 8-66 which the fund was created considering the development of new
 8-67 technologies that are not subject to the existing funding mechanism
 8-68 and the shift in jurisdictional control from this state to the
 8-69 federal government. The commission shall also review and make

9-1 recommendations on any mechanisms adopted under Section 56.025.
9-2 Not later than January 5, 2007, the commission shall deliver to the
9-3 legislature a report on these issues. If the commission determines
9-4 that the existing funding mechanism is not adequate, or proposes to
9-5 change the manner or level of current funding, the commission must
9-6 include recommendations for alternative funding and basic service
9-7 pricing methods that will be adequate and are consistent with a
9-8 policy of technology and competitive neutrality in the assessment
9-9 of fees and other state-imposed economic burdens.

9-10 (i) This section expires September 1, 2007.

9-11 Sec. 56.030. AFFIDAVITS OF COMPLIANCE. On or before
9-12 September 1 of each year, a telecommunications provider that
9-13 receives disbursements from the universal service fund shall file
9-14 with the commission an affidavit certifying that the
9-15 telecommunications provider is in compliance with the requirements
9-16 for receiving money from the universal service fund and
9-17 requirements regarding the use of money from each universal service
9-18 fund program for which the telecommunications provider receives
9-19 disbursements.

9-20 Sec. 56.031. ADJUSTMENTS. The commission may revise the
9-21 monthly per line support amounts to be made available from the Texas
9-22 High Cost Universal Service Plan and from the Small and Rural
9-23 Incumbent Local Exchange Company Universal Service Plan at any time
9-24 after September 1, 2007, after notice and an opportunity for
9-25 hearing. In determining appropriate monthly per line support
9-26 amounts, the commission shall consider the adequacy of basic rates
9-27 to support universal service.

9-28 SECTION 15. Subchapter B, Chapter 56, Utilities Code, is
9-29 amended by adding Section 56.032 to read as follows:

9-30 Sec. 56.032. COMMISSION REVIEW AND EVALUATION OF DISTANCE
9-31 LEARNING DISCOUNTS AND PRIVATE NETWORK SERVICES FOR CERTAIN
9-32 ENTITIES. (a) On or before October 1, 2005, the commission shall
9-33 initiate a study for the purpose of evaluating a new funding
9-34 mechanism to provide financial support to all telecommunications
9-35 utilities that provide discounts or private network services at
9-36 prescribed rates to the entities identified in Subchapter B,
9-37 Chapter 57, Subchapter G, Chapter 58, and Subchapter D, Chapter 59.

9-38 (b) The study must include an evaluation of alternative
9-39 sources of funding such support, including utilizing federal E-rate
9-40 funding, and an evaluation of alternative funding mechanisms that
9-41 would result in support being made available to all
9-42 telecommunications utilities on a nondiscriminatory basis and on a
9-43 technology neutral basis in exchange for providing services at
9-44 rates comparable to those preferred rates being paid by the
9-45 entities identified under Subchapter B, Chapter 57, Subchapter G,
9-46 Chapter 58, and Subchapter D, Chapter 59, provisions.

9-47 (c) The commission shall conduct necessary proceedings to
9-48 evaluate the appropriate funding mechanism and the appropriate
9-49 method for determining the amount of support to be made available to
9-50 telecommunications utilities that provide discounts to entities
9-51 listed in Subsection (b).

9-52 (d) On or before November 15, 2006, the commission shall
9-53 issue a report to the speaker of the house of representatives and
9-54 the lieutenant governor on the viability of establishing a new
9-55 program or funding mechanism through which support shall be funded
9-56 and disbursed in exchange for providing discounts to the entities
9-57 listed in Subsection (b). The commission shall include in the
9-58 report its findings regarding the cost of any new funding
9-59 mechanism, the benefit of establishing a new program or funding
9-60 mechanism, and any other relevant information the commission deems
9-61 appropriate to assist the legislature in its review of discounts
9-62 for distance learning and private network services.

9-63 (e) This section expires September 1, 2007.

9-64 SECTION 16. Chapter 56, Utilities Code, is amended by
9-65 adding Subchapter H to read as follows:

9-66 SUBCHAPTER H. AUDIO NEWSPAPER PROGRAM

9-67 Sec. 56.301. AUDIO NEWSPAPER ASSISTANCE PROGRAM. The
9-68 commission by rule shall establish a program to provide from the
9-69 universal service fund financial assistance for a free telephone

10-1 service for blind and visually impaired persons that offers the
 10-2 text of newspapers using synthetic speech. The commission may
 10-3 adopt rules to implement the program.

10-4 SECTION 17. Section 58.051, Utilities Code, is amended by
 10-5 amending Subsection (a) and adding Subsections (a-1), (c), and (d)
 10-6 to read as follows:

10-7 (a) Unless reclassified under Section 58.024, the following
 10-8 services are basic network services:

10-9 (1) flat rate residential local exchange telephone
 10-10 service, including primary directory listings and the receipt of a
 10-11 directory and any applicable mileage or zone charges;

10-12 (2) residential tone dialing service;

10-13 (3) lifeline and tel-assistance service;

10-14 (4) service connection for basic residential
 10-15 services;

10-16 (5) direct inward dialing service for basic
 10-17 residential services;

10-18 (6) private pay telephone access service;

10-19 (7) call trap and trace service;

10-20 (8) access for all residential and business end users
 10-21 to 911 service provided by a local authority and access to dual
 10-22 party relay service;

10-23 (9) mandatory residential extended area service
 10-24 arrangements; and

10-25 (10) mandatory residential extended metropolitan
 10-26 service or other mandatory residential toll-free calling
 10-27 arrangements[~~, and~~

10-28 [~~(11) residential call waiting service~~].

10-29 (a-1) Notwithstanding Subsection (a) and Section 58.151,
 10-30 basic network services include residential caller identification
 10-31 services if the customer to whom the service is billed is at least
 10-32 65 years of age.

10-33 (c) At the election of the affected incumbent local exchange
 10-34 company, the price for basic network service shall also include the
 10-35 fees and charges for any mandatory extended area service
 10-36 arrangements, mandatory expanded toll-free calling plans, and any
 10-37 other service included in the definition of basic network service.

10-38 (d) A nonpermanent expanded toll-free local calling service
 10-39 surcharge established by the commission to recover the costs of
 10-40 mandatory expanded toll-free local calling service:

10-41 (1) is considered a part of basic network service;

10-42 (2) may not be aggregated under Subsection (c); and

10-43 (3) continues to be transitioned in accordance with
 10-44 commission orders and substantive rules.

10-45 SECTION 18. Section 58.151, Utilities Code, is amended to
 10-46 read as follows:

10-47 Sec. 58.151. SERVICES INCLUDED. The following services are
 10-48 classified as nonbasic services:

10-49 (1) flat rate business local exchange telephone
 10-50 service, including primary directory listings and the receipt of a
 10-51 directory, and any applicable mileage or zone charges, except that
 10-52 the prices for this service shall be capped until September 1, 2005,
 10-53 at the prices in effect on September 1, 1999;

10-54 (2) business tone dialing service, except that the
 10-55 prices for this service shall be capped until September 1, 2005, at
 10-56 the prices in effect on September 1, 1999;

10-57 (3) service connection for all business services,
 10-58 except that the prices for this service shall be capped until
 10-59 September 1, 2005, at the prices in effect on September 1, 1999;

10-60 (4) direct inward dialing for basic business services,
 10-61 except that the prices for this service shall be capped until
 10-62 September 1, 2005, at the prices in effect on September 1, 1999;

10-63 (5) "1-plus" intraLATA message toll services;

10-64 (6) 0+ and 0- operator services;

10-65 (7) call waiting, call forwarding, and custom calling,
 10-66 except that:

10-67 (A) residential call waiting service shall be
 10-68 classified as a basic network service until July 1, 2006; and

10-69 (B) for an electing company subject to Section

11-1 58.301, prices for residential call forwarding and other custom
11-2 calling services shall be capped at the prices in effect on
11-3 September 1, 1999, until the electing company implements the
11-4 reduction in switched access rates described by Section 58.301(2);

11-5 (8) call return, caller identification, and call
11-6 control options, except that, for an electing company subject to
11-7 Section 58.301, prices for residential call return, caller
11-8 identification, and call control options shall be capped at the
11-9 prices in effect on September 1, 1999, until the electing company
11-10 implements the reduction in switched access rates described by
11-11 Section 58.301(2);

11-12 (9) central office based PBX-type services;

11-13 (10) billing and collection services, including
11-14 installment billing and late payment charges for customers of the
11-15 electing company;

11-16 (11) integrated services digital network (ISDN)
11-17 services, except that prices for Basic Rate Interface (BRI) ISDN
11-18 services, which comprise up to two 64 Kbps B-channels and one 16
11-19 Kbps D-channel, shall be capped until September 1, 2005, at the
11-20 prices in effect on September 1, 1999;

11-21 (12) new services;

11-22 (13) directory assistance services, except that an
11-23 electing company shall provide to a residential customer the first
11-24 three directory assistance inquiries in a monthly billing cycle at
11-25 no charge until July 1, 2006;

11-26 (14) services described in the WATS tariff as the
11-27 tariff existed on January 1, 1995;

11-28 (15) 800 and foreign exchange services;

11-29 (16) private line service;

11-30 (17) special access service;

11-31 (18) services from public pay telephones;

11-32 (19) paging services and mobile services (IMTS);

11-33 (20) 911 services provided to a local authority that
11-34 are available from another provider;

11-35 (21) speed dialing;

11-36 (22) three-way calling; and

11-37 (23) all other services subject to the commission's
11-38 jurisdiction that are not specifically classified as basic network
11-39 services in Section 58.051, except that nothing in this section
11-40 shall preclude a customer from subscribing to a local flat rate
11-41 residential or business line for a computer modem or a facsimile
11-42 machine.

11-43 SECTION 19. Subsection (a), Section 58.258, Utilities Code,
11-44 is amended to read as follows:

11-45 (a) Notwithstanding the pricing flexibility authorized by
11-46 this subtitle, an electing company's rates for private network
11-47 services may not be increased [~~on or~~] before January 1, 2012 [~~the~~
11-48 ~~sixth anniversary of the company's date of election~~]. However, an
11-49 electing company may increase a rate in accordance with the
11-50 provisions of a customer specific contract.

11-51 SECTION 20. Subchapter G, Chapter 58, Utilities Code, is
11-52 amended by adding Section 58.268 to read as follows:

11-53 Sec. 58.268. CONTINUATION OF OBLIGATION. Notwithstanding
11-54 any other provision of this title, an electing company shall
11-55 continue to comply with this subchapter until January 1, 2012,
11-56 regardless of:

11-57 (1) the date the company elected under this chapter;
11-58 or

11-59 (2) any action taken in relation to that company under
11-60 Chapter 65.

11-61 SECTION 21. Subsection (a), Section 59.077, Utilities Code,
11-62 is amended to read as follows:

11-63 (a) Notwithstanding the pricing flexibility authorized by
11-64 this subtitle, an electing company's rates for private network
11-65 services may not be increased [~~on or~~] before January 1, 2012 [~~the~~
11-66 ~~sixth anniversary of the company's election date~~].

11-67 SECTION 22. Subchapter D, Chapter 59, Utilities Code, is
11-68 amended by adding Section 59.083 to read as follows:

11-69 Sec. 59.083. CONTINUATION OF OBLIGATION. Notwithstanding

any other provision of this title, an electing company shall continue to comply with this subchapter until January 1, 2012, regardless of:

- (1) the date the company elected under this chapter;
- or
- (2) any action taken in relation to that company under Chapter 65.

SECTION 23. Chapter 60, Utilities Code, is amended by adding Subchapter J to read as follows:

SUBCHAPTER J. WHOLESALE CODE OF CONDUCT

Sec. 60.201. STATEMENT OF POLICY. It is the policy of this state that providers of telecommunications services operate in a manner that is consistent with minimum standards to provide customers with continued competitive choices.

Sec. 60.202. APPLICABILITY OF SUBCHAPTER. A provision of this subchapter applies only to the extent the provision has not been preempted by federal law or a rule, regulation, or order of the Federal Communications Commission.

Sec. 60.203. MINIMUM SERVICE REQUIREMENTS. A telecommunications provider may not unreasonably:

- (1) discriminate against another provider by refusing access to an exchange;
- (2) refuse or delay an interconnection to another provider;
- (3) degrade the quality of access the telecommunications provider provides to another provider;
- (4) impair the speed, quality, or efficiency of a line used by another provider;
- (5) fail to fully disclose in a timely manner on request all available information necessary to design equipment that will meet the specifications of the network; or
- (6) refuse or delay access by a person to another provider.

Sec. 60.204. INTERCONNECTION. A telecommunications provider shall provide interconnection with other telecommunications providers' networks for the transmission and routing of telephone exchange service and exchange access.

Sec. 60.205. NUMBER PORTABILITY. A telecommunications provider shall provide number portability in accordance with federal requirements.

Sec. 60.206. DUTY TO NEGOTIATE. A telecommunications provider shall negotiate in good faith the terms and conditions of any agreement.

Sec. 60.207. DIALING PARITY. (a) A telecommunications provider shall provide dialing parity to competing telecommunications providers of telephone exchange service and telephone toll service.

(b) A telecommunications provider shall provide nondiscriminatory access to telephone numbers, operator services, directory assistance, and directory listings and may not delay that access unreasonably.

Sec. 60.208. ACCESS TO RIGHTS-OF-WAY. A telecommunications provider shall provide access to poles, ducts, conduits, and rights-of-way to competing providers of telecommunications service on rates, terms, and conditions that are just, reasonable, and nondiscriminatory.

Sec. 60.209. RECIPROCAL COMPENSATION. A telecommunications provider shall establish reciprocal compensation arrangements for the transport and termination of telecommunications.

Sec. 60.210. ACCESS TO SERVICES. A telecommunications provider shall provide access to:

- (1) 911 and E-911 service;
- (2) directory assistance service to allow other telecommunications providers' customers to obtain telephone numbers; and
- (3) operator call completion service.

SECTION 24. Subchapter A, Chapter 62, Utilities Code, is amended by adding Section 62.003 to read as follows:

Sec. 62.003. REQUIREMENTS RELATING TO AUDIO AND VIDEO

13-1 PROGRAMMING. (a) This section applies only to a provider of
 13-2 advanced services or local exchange telephone service that has more
 13-3 than 500,000 access lines in service in this state and that delivers
 13-4 audio programming with localized content or video programming to
 13-5 its subscribers.

13-6 (b) Notwithstanding any other provision of this title, a
 13-7 provider of advanced services or local exchange telephone service
 13-8 shall provide subscribers access to the signals of the local
 13-9 broadcast television and radio stations licensed by the Federal
 13-10 Communications Commission to serve those subscribers over the air;
 13-11 provided with respect to low power television stations, this
 13-12 section shall only apply to those low power television stations
 13-13 that are "qualified low power stations" as defined in 47 U.S.C.
 13-14 Section 534(h)(2).

13-15 (c) To facilitate access by subscribers of a provider of
 13-16 advanced services or local exchange telephone service to the
 13-17 signals of local broadcast stations, a station either shall be
 13-18 granted mandatory carriage or may request retransmission consent
 13-19 with the provider.

13-20 (d) This title does not require a provider of advanced
 13-21 services or local exchange telephone service to provide a
 13-22 television or radio station valuable consideration in exchange for
 13-23 carriage.

13-24 (e) A provider of advanced services or local exchange
 13-25 telephone service shall transmit without degradation the signals a
 13-26 local broadcast station delivers to the provider. The transmission
 13-27 quality offered a broadcast station may not be lower than the
 13-28 quality made available to another broadcast station or video or
 13-29 audio programming source.

13-30 (f) A provider of advanced services or local exchange
 13-31 telephone service that delivers audio or video programming to its
 13-32 subscribers may not:

13-33 (1) discriminate among broadcast stations or between
 13-34 broadcast stations on the one hand and programming providers on the
 13-35 other with respect to transmission of their signals, taking into
 13-36 account any consideration afforded a provider of advanced services
 13-37 or local exchange telephone service by any such programming
 13-38 provider or broadcast station; or

13-39 (2) delete, change, or alter a copyright
 13-40 identification transmitted as part of a broadcast station's signal.

13-41 (g) A provider of advanced services or local exchange
 13-42 telephone service that delivers audio or video programming shall be
 13-43 subject to any applicable network nonduplication or syndicated
 13-44 exclusivity rules promulgated by the Federal Communications
 13-45 Commission to the extent applicable to cable systems as defined by
 13-46 the commission.

13-47 (h) A provider of advanced services or local exchange
 13-48 telephone service that delivers audio or video programming to its
 13-49 subscribers shall include all programming providers in a subscriber
 13-50 programming guide, if any, that lists program schedules.

13-51 SECTION 25. Chapter 64, Utilities Code, is amended by
 13-52 adding Subchapter F to read as follows:

13-53 SUBCHAPTER F. TRUTH IN TELECOMMUNICATIONS BILLING

13-54 Sec. 64.251. DEFINITION. In this subchapter, "commercial
 13-55 mobile service provider" means a provider of commercial mobile
 13-56 service as defined by Section 332(d), Communications Act of 1934
 13-57 (47 U.S.C. Section 151 et seq.), Federal Communications Commission
 13-58 rules, and the Omnibus Budget Reconciliation Act of 1993 (Pub. L.
 13-59 No. 103-66).

13-60 Sec. 64.252. BILLING STATEMENT. (a) A commercial mobile
 13-61 service provider or a provider of voice service, as defined in
 13-62 Section 283.002, Local Government Code, may include only the
 13-63 following in an end-user customer's bill:

13-64 (1) applicable charges for service and options
 13-65 requested by the end-user customer; and

13-66 (2) taxes imposed by a governmental entity
 13-67 specifically on the end-user customer.

13-68 (b) An end-user customer's bill may not contain a fee,
 13-69 charge, or tax unless a contract provision, tariff, or state or

14-1 federal law:

14-2 (1) requires the end-user customer to pay the fee,
14-3 charge, or tax; or

14-4 (2) authorizes a commercial mobile service provider or
14-5 a provider of voice service, as defined in Section 283.002, Local
14-6 Government Code, to include the fee, charge, or tax in an end-user
14-7 customer's bill.

14-8 (c) This section shall not apply to a billing utility, as
14-9 defined in Section 64.002, that bills for goods or services
14-10 provided by another entity.

14-11 (d) A violation of this section is a false, misleading, or
14-12 deceptive act or practice within the meaning of Section 17.46,
14-13 Business & Commerce Code, but shall only be actionable by the
14-14 attorney general.

14-15 SECTION 26. Subtitle C, Title 2, Utilities Code, is amended
14-16 by adding Chapter 65 to read as follows:

14-17 CHAPTER 65. DEREGULATION OF CERTAIN INCUMBENT LOCAL EXCHANGE

14-18 COMPANY MARKETS

14-19 SUBCHAPTER A. GENERAL PROVISIONS

14-20 Sec. 65.001. STATEMENT OF POLICY. It is the policy of this
14-21 state to provide for full rate and service competition in the
14-22 telecommunications market of this state so that customers may
14-23 benefit from innovations in service quality and market-based
14-24 pricing.

14-25 Sec. 65.002. DEFINITIONS. In this chapter:

14-26 (1) "Deregulated company" means an incumbent local
14-27 exchange company for which all of the company's markets have been
14-28 deregulated.

14-29 (2) "Market" means an exchange in which an incumbent
14-30 local exchange company provides residential local exchange
14-31 telephone service.

14-32 (3) "Regulated company" means an incumbent local
14-33 exchange company for which none of the company's markets have been
14-34 deregulated.

14-35 (4) "Stand-alone residential local exchange voice
14-36 service" means:

14-37 (A) residential tone dialing service;

14-38 (B) services and functionalities supported under
14-39 the lifeline program;

14-40 (C) access for all residential end users to 911
14-41 service provided by a local authority and access to dual party relay
14-42 service;

14-43 (D) at the election of the incumbent local
14-44 exchange company, mandatory residential extended area service
14-45 arrangements, mandatory residential extended metropolitan service
14-46 or other mandatory residential toll-free calling arrangements,
14-47 mandatory expanded local calling service arrangements, or another
14-48 service that a company is required under a tariff to provide to a
14-49 customer who subscribes or may subscribe to basic network services;

14-50 (E) flat rate residential local exchange
14-51 telephone service delivered by landline, but only if the service is
14-52 ordered and received independent of:

14-53 (i) a service classified as a nonbasic
14-54 service under Section 58.151 or residential call waiting service;

14-55 (ii) a package of services that includes a
14-56 service classified as a nonbasic service under Section 58.151; or

14-57 (iii) another flat rate residential local
14-58 exchange service delivered by landline; and

14-59 (F) residential caller identification services
14-60 if the customer to whom the service is billed is at least 65 years of
14-61 age.

14-62 (5) "Transitioning company" means an incumbent local
14-63 exchange company for which at least one, but not all, of the
14-64 company's markets has been deregulated.

14-65 Sec. 65.003. COMMISSION AUTHORITY. (a) Notwithstanding
14-66 any other provisions of this title, the commission has authority to
14-67 implement and enforce this chapter.

14-68 (b) The commission may adopt rules and conduct proceedings
14-69 necessary to administer and enforce this chapter, including rules

15-1 to determine whether a market should remain regulated, should be
 15-2 deregulated, or should be reregulated.

15-3 Sec. 65.004. INFORMATION. (a) The commission may collect
 15-4 and compile information from all telecommunications providers as
 15-5 necessary to implement and enforce this chapter.

15-6 (b) The commission shall maintain the confidentiality of
 15-7 information collected under this chapter that is claimed to be
 15-8 confidential for competitive purposes. Information that is claimed
 15-9 to be confidential is exempt from disclosure under Chapter 552,
 15-10 Government Code.

15-11 Sec. 65.005. CUSTOMER PROTECTION. This chapter does not
 15-12 affect a customer's right to complain to the commission regarding a
 15-13 telecommunications provider.

15-14 [Sections 65.006-65.050 reserved for expansion]

15-15 SUBCHAPTER B. DETERMINATION OF WHETHER MARKET SHOULD BE REGULATED

15-16 Sec. 65.051. MARKETS DEREGULATED. (a) Except as provided
 15-17 by Subsection (b), all markets of all incumbent local exchange
 15-18 companies are deregulated on January 1, 2006, unless the commission
 15-19 determines under Section 65.052(a) that a market or markets should
 15-20 remain regulated.

15-21 (b) A market of an incumbent local exchange company in which
 15-22 the population in the area included in the market is less than
 15-23 30,000 is deregulated on January 1, 2007, unless the commission
 15-24 determines under Section 65.052(f) that the market should remain
 15-25 regulated.

15-26 Sec. 65.052. DETERMINATION OF WHETHER A MARKET SHOULD
 15-27 REMAIN REGULATED. (a) Except as provided by Subsection (f), the
 15-28 commission shall:

15-29 (1) determine whether each market of an incumbent
 15-30 local exchange company should remain regulated on and after January
 15-31 1, 2006; and

15-32 (2) issue a final order classifying the company in
 15-33 accordance with this section effective January 1, 2006.

15-34 (b) In making a determination under Subsection (a), the
 15-35 commission may not determine that a market should remain regulated
 15-36 if:

15-37 (1) the population in the area included in the market
 15-38 is at least 100,000; or

15-39 (2) the population in the area included in the market
 15-40 is at least 30,000 but less than 100,000 and, in addition to the
 15-41 incumbent local exchange company, there are at least three
 15-42 competitors of which:

15-43 (A) at least one is a telecommunications provider
 15-44 that holds a certificate of operating authority or service provider
 15-45 certificate of operating authority and provides residential local
 15-46 exchange telephone service in the market;

15-47 (B) at least one is an entity providing
 15-48 residential telephone service in the market using facilities that
 15-49 the entity or its affiliate owns; and

15-50 (C) at least one is a provider in that market of
 15-51 commercial mobile service as defined by Section 332(d),
 15-52 Communications Act of 1934 (47 U.S.C. Section 151 et seq.), Federal
 15-53 Communications Commission rules, and the Omnibus Budget
 15-54 Reconciliation Act of 1993 (Pub. L. No. 103-66), that is not
 15-55 affiliated with the incumbent local exchange company.

15-56 (c) The commission shall issue an order classifying an
 15-57 incumbent local exchange company as a deregulated company that is
 15-58 subject to Subchapter C if:

15-59 (1) the company does not have any markets in which the
 15-60 population in the area included in the market is less than 30,000;
 15-61 and

15-62 (2) the commission does not determine that a market of
 15-63 the company should remain regulated on and after January 1, 2006.

15-64 (d) Regardless of the population in the area included in an
 15-65 incumbent local exchange company's markets, the commission shall
 15-66 issue an order classifying the company as a transitioning company
 15-67 that is subject to Subchapter D if the commission determines that
 15-68 one or more, but not all, of the markets of the company should
 15-69 remain regulated on and after January 1, 2006.

16-1 (e) The commission shall issue an order classifying the
 16-2 company as a regulated company that is subject to the provisions of
 16-3 this title that applied to the company on September 1, 2005, if the
 16-4 commission determines that all of the markets of the company in
 16-5 which the population in each area included in the markets is at
 16-6 least 30,000 should remain regulated on and after January 1, 2006.
 16-7 This subsection does not affect the authority of a regulated
 16-8 company to elect under Chapter 58 or 59 after January 1, 2005, and
 16-9 to be regulated under the chapter under which the company elected.

16-10 (f) Not later than November 30, 2006, the commission shall
 16-11 determine whether a market of an incumbent local exchange company
 16-12 in which the population in the area included in the market is less
 16-13 than 30,000 should remain regulated on or after January 1, 2007.
 16-14 The commission by rule shall determine the market test to be applied
 16-15 in determining whether the market should remain regulated. If the
 16-16 commission does not determine that the market should remain
 16-17 regulated on or after January 1, 2007, and the deregulation of that
 16-18 market results in a transitioning or regulated company no longer
 16-19 meeting the definition of a transitioning or regulated company, as
 16-20 appropriate, the commission shall issue an order reclassifying the
 16-21 company appropriately.

16-22 Sec. 65.053. INCUMBENT LOCAL EXCHANGE COMPANY MARKETS.

16-23 (a) Notwithstanding Section 65.052, an incumbent local exchange
 16-24 company may elect to have all of the company's markets remain
 16-25 regulated on and after January 1, 2006.

16-26 (b) To make an election under Subsection (a), an incumbent
 16-27 local exchange company must file an affidavit with the commission
 16-28 making that election not later than December 1, 2005.

16-29 (c) If an incumbent local exchange company makes an election
 16-30 under this section, the commission shall issue an order classifying
 16-31 the company as a regulated company that is subject to the provisions
 16-32 of this title that applied to the company on September 1, 2005.
 16-33 This subsection does not affect the authority of a regulated
 16-34 company to elect under Chapter 58 or 59 after January 1, 2005, and
 16-35 to be regulated under the chapter under which the company elected.

16-36 Sec. 65.054. PETITION FOR DEREGULATION. (a) After July 1,
 16-37 2007, a company may petition the commission to deregulate a market
 16-38 that the commission previously determined should remain regulated.

16-39 (b) If the commission deregulates a market under this
 16-40 section and the deregulation results in the transitioning or
 16-41 regulated company no longer meeting the definition of a
 16-42 transitioning or regulated company, as appropriate, the commission
 16-43 shall issue an order reclassifying the company appropriately.

16-44 Sec. 65.055. COMMISSION AUTHORITY TO REREGULATE CERTAIN
 16-45 MARKETS. (a) This section applies only to a market of an incumbent
 16-46 local exchange company in which the population in the area included
 16-47 in the market is less than 100,000.

16-48 (b) The commission, on its own motion or on a complaint that
 16-49 the commission considers to have merit, may determine that a market
 16-50 that was previously deregulated should again be subject to
 16-51 regulation.

16-52 (c) The commission by rule shall prescribe the procedures
 16-53 and standards applicable to a determination under this section.

16-54 [Sections 65.056-65.100 reserved for expansion]

16-55 SUBCHAPTER C. DEREGULATED COMPANY

16-56 Sec. 65.101. ISSUANCE OF CERTIFICATE OF OPERATING
 16-57 AUTHORITY. (a) A deregulated company may petition the commission
 16-58 to relinquish the company's certificate of convenience and
 16-59 necessity and receive a certificate of operating authority.

16-60 (b) The commission shall issue the deregulated company a
 16-61 certificate of operating authority and rescind the deregulated
 16-62 company's certificate of convenience and necessity if the
 16-63 commission finds that all of the company's markets have been
 16-64 deregulated under Subchapter B.

16-65 Sec. 65.102. REQUIREMENTS. (a) A deregulated company that
 16-66 holds a certificate of operating authority issued under this
 16-67 subchapter is a nondominant carrier governed in the same manner as a
 16-68 holder of a certificate of operating authority issued under Chapter
 16-69 54, except that the deregulated company:

17-1 (1) retains the obligations of a provider of last
 17-2 resort under Chapter 54;

17-3 (2) is subject to the following provisions in the same
 17-4 manner as an incumbent local exchange company that is not
 17-5 deregulated:

17-6 (A) Sections 54.156, 54.158, and 54.159;

17-7 (B) Section 55.012; and

17-8 (C) Chapter 60; and

17-9 (3) may not increase the company's rates for
 17-10 stand-alone residential local exchange voice service before the
 17-11 date that the commission has the opportunity to revise the monthly
 17-12 per line support under the Texas High Cost Universal Service Plan
 17-13 pursuant to Section 56.031, regardless of whether the company is an
 17-14 electing company under Chapter 58.

17-15 (b) In each deregulated market, a deregulated company shall
 17-16 make available to all residential customers uniformly throughout
 17-17 that market the same price, terms, and conditions for all basic and
 17-18 non-basic services, consistent with any pricing flexibility
 17-19 available to such company on or before August 31, 2005.

17-20 [Sections 65.103-65.150 reserved for expansion]

17-21 SUBCHAPTER D. TRANSITIONING COMPANY

17-22 Sec. 65.151. PROVISIONS APPLICABLE TO TRANSITIONING
 17-23 COMPANY. A transitioning company is governed by this subchapter
 17-24 and the provisions of this title that applied to the company
 17-25 immediately before the date the company was classified as a
 17-26 transitioning company. If there is a conflict between this
 17-27 subchapter and the other applicable provisions of this title, this
 17-28 subchapter controls.

17-29 Sec. 65.152. GENERAL REQUIREMENTS. (a) A transitioning
 17-30 company may:

17-31 (1) exercise pricing flexibility in a market in the
 17-32 manner provided by Section 58.063 one day after providing an
 17-33 informational notice as required by that section; and

17-34 (2) introduce a new service in a market in the manner
 17-35 provided by Section 58.153 one day after providing an informational
 17-36 notice as required by that section.

17-37 (b) A transitioning company may not be required to comply
 17-38 with exchange-specific retail quality of service standards or
 17-39 reporting requirements in a market that is deregulated.

17-40 Sec. 65.153. RATE REQUIREMENTS. (a) In a market that
 17-41 remains regulated, a transitioning company shall price the
 17-42 company's retail services in accordance with the provisions that
 17-43 applied to that company immediately before the date the company was
 17-44 classified as a transitioning company.

17-45 (b) In a market that is deregulated, a transitioning company
 17-46 shall price the company's retail services as follows:

17-47 (1) for all services, other than basic local
 17-48 telecommunications service, at any price higher than the service's
 17-49 long run incremental cost; and

17-50 (2) for basic local telecommunications service, at any
 17-51 price higher than the lesser of the service's long run incremental
 17-52 cost or the tariffed price on the date that market was deregulated,
 17-53 provided that the company may not increase the company's rates for
 17-54 stand-alone residential local exchange voice service before the
 17-55 date that the commission has the opportunity to revise the monthly
 17-56 per line support under the Texas High Cost Universal Service Plan
 17-57 pursuant to Section 56.031, regardless of whether the company is an
 17-58 electing company under Chapter 58.

17-59 (c) In each deregulated market, a transitioning company
 17-60 shall make available to all residential customers uniformly
 17-61 throughout that market the same price, terms, and conditions for
 17-62 all basic and non-basic services, consistent with any pricing
 17-63 flexibility available to such company on or before August 31, 2005.

17-64 (d) In any market, regardless of whether regulated or
 17-65 deregulated, the transitioning company may not:

17-66 (1) establish a retail rate, term, or condition that
 17-67 is anticompetitive or unreasonably preferential, prejudicial, or
 17-68 discriminatory;

17-69 (2) establish a retail rate for a basic or non-basic

18-1 service in a deregulated market that is subsidized either directly
 18-2 or indirectly by a basic or non-basic service provided in an
 18-3 exchange that is not deregulated; or

18-4 (3) engage in predatory pricing or attempt to engage
 18-5 in predatory pricing.

18-6 (e) A rate that meets the pricing requirements in Subsection
 18-7 (b) shall be deemed compliant with Subsection (d)(2).

18-8 [Sections 65.154-65.200 reserved for expansion]

18-9 SUBCHAPTER E. REDUCTION OF SWITCHED ACCESS RATES

18-10 Sec. 65.201. REDUCTION OF SWITCHED ACCESS RATES BY
 18-11 DEREGULATED COMPANY. (a) On the date the last market of an
 18-12 incumbent local exchange company is deregulated, the company shall
 18-13 reduce both the company's originating and terminating per minute of
 18-14 use switched access rates in each market to parity with the
 18-15 company's respective federal originating and terminating per
 18-16 minute of use switched access rates.

18-17 (b) After reducing the rates under Subsection (a), a
 18-18 deregulated company shall maintain parity with the company's
 18-19 federal originating and terminating per minute of use switched
 18-20 access rates. If the company's federal originating and terminating
 18-21 per minute of use switched access rates are changed, the company
 18-22 shall change the company's per minute of use switched access rates
 18-23 in each market as necessary to re-achieve parity with the company's
 18-24 federal originating and terminating per minute of use switched
 18-25 access rates.

18-26 Sec. 65.202. REDUCTION OF SWITCHED ACCESS RATES BY
 18-27 TRANSITIONING COMPANY WITH MORE THAN THREE MILLION ACCESS LINES.
 18-28 (a) Notwithstanding any other provision of this title, a
 18-29 transitioning company that has more than three million access lines
 18-30 in service in this state on January 1, 2006, shall:

18-31 (1) on July 1, 2006, reduce both the company's
 18-32 originating and terminating per minute of use switched access rates
 18-33 in each market by an amount equal to 33 percent of the difference in
 18-34 the rates in effect on June 30, 2006, and the company's respective
 18-35 federal originating and terminating per minute of use switched
 18-36 access rates;

18-37 (2) on July 1, 2007, reduce both the company's
 18-38 originating and terminating per minute of use switched access rates
 18-39 in each market by an amount equal to 33 percent of the difference in
 18-40 the rates in effect on June 30, 2006, and the company's respective
 18-41 federal originating and terminating per minute of use switched
 18-42 access rates; and

18-43 (3) on July 1, 2008, reduce both the company's
 18-44 originating and terminating per minute of use switched access rates
 18-45 in each market to parity with the company's respective federal
 18-46 originating and terminating per minute of use switched access
 18-47 rates.

18-48 (b) After reducing the rates under Subsection (a), a
 18-49 transitioning company shall maintain parity with the company's
 18-50 federal originating and terminating per minute of use switched
 18-51 access rates. If the company's federal originating and terminating
 18-52 per minute of use switched access rates are changed, the company
 18-53 shall change the company's per minute of use switched access rates
 18-54 in each market as necessary to re-achieve parity with the company's
 18-55 federal originating and terminating per minute of use switched
 18-56 access rates.

18-57 Sec. 65.203. REDUCTION OF SWITCHED ACCESS RATES BY CERTAIN
 18-58 TRANSITIONING COMPANIES WITH NOT MORE THAN THREE MILLION ACCESS
 18-59 LINES. (a) Notwithstanding any other provision of this title, a
 18-60 company that is classified as a transitioning company effective
 18-61 January 1, 2006, and that has not more than three million access
 18-62 lines in service in this state on that date shall reduce both the
 18-63 company's originating and terminating per minute of use switched
 18-64 access rates in each market in accordance with this section.

18-65 (b) On July 1, 2006, the transitioning company shall reduce
 18-66 both the company's originating and terminating per minute of use
 18-67 switched access rates in each market by an amount equal to the
 18-68 lesser of:

18-69 (1) 25 percent of the difference in the company's rates

19-1 in effect on June 30, 2006, and the company's respective federal
 19-2 originating and terminating per minute of use switched access rates
 19-3 in effect on that date; or

19-4 (2) an amount derived by multiplying that difference
 19-5 by a percentage derived by dividing the number of the company's
 19-6 markets that are not regulated on July 1, 2006, by the total number
 19-7 of the company's markets on December 30, 2005.

19-8 (c) On July 1, 2007, the transitioning company shall reduce
 19-9 both the company's originating and terminating per minute of use
 19-10 switched access rates in each market by an amount equal to the
 19-11 lesser of:

19-12 (1) 25 percent of the difference in the company's rates
 19-13 in effect on June 30, 2006, and the company's respective federal
 19-14 originating and terminating per minute of use switched access rates
 19-15 in effect on that date; or

19-16 (2) an amount derived by multiplying that difference
 19-17 by a percentage derived by dividing the number of the company's
 19-18 markets that were deregulated in the prior 12 months by the total
 19-19 number of the company's markets on December 30, 2005.

19-20 (d) On July 1, 2008, the transitioning company shall reduce
 19-21 both the company's originating and terminating per minute of use
 19-22 switched access rates in each market by an amount equal to the
 19-23 lesser of:

19-24 (1) 25 percent of the difference in the company's rates
 19-25 in effect on June 30, 2006, and the company's respective federal
 19-26 originating and terminating per minute of use switched access rates
 19-27 in effect on that date; or

19-28 (2) an amount derived by multiplying that difference
 19-29 by a percentage derived by dividing the number of the company's
 19-30 markets that were deregulated in the prior 12 months by the total
 19-31 number of the company's markets on December 30, 2005.

19-32 (e) On July 1, 2009, and each succeeding year thereafter on
 19-33 July 1, the transitioning company shall reduce both the company's
 19-34 originating and terminating per minute of use switched access rates
 19-35 in each market by an amount derived by multiplying the difference in
 19-36 the company's rates in effect on June 30, 2006, and the company's
 19-37 respective federal originating and terminating per minute of use
 19-38 switched access rates in effect on that date by a percentage derived
 19-39 by dividing the number of the company's markets that were
 19-40 deregulated in the prior 12 months by the total number of the
 19-41 company's markets on December 30, 2005, except that a transitioning
 19-42 company shall be required to reduce both the company's originating
 19-43 and terminating per minute of use switched access charges to parity
 19-44 with the company's respective federal originating and terminating
 19-45 per minute of use switched access charges if more than 75 percent of
 19-46 the transitioning company's markets are not regulated on July 1 of
 19-47 2009 or any succeeding year.

19-48 (f) After reducing the rates under Subsection (e), a
 19-49 transitioning company shall maintain parity with the company's
 19-50 federal originating and terminating per minute of use switched
 19-51 access rates. If the company's federal originating and terminating
 19-52 per minute of use switched access rates are changed, the company
 19-53 shall change the company's per minute of use switched access rates
 19-54 in each market as necessary to re-achieve parity with the company's
 19-55 federal originating and terminating per minute of use switched
 19-56 access rates.

19-57 Sec. 65.204. REDUCTION OF SWITCHED ACCESS RATES BY NEWLY
 19-58 DESIGNATED TRANSITIONING COMPANY. (a) Notwithstanding any other
 19-59 provision of this title, a company that is classified as a
 19-60 transitioning company after January 1, 2006, shall reduce both the
 19-61 company's originating and terminating per minute of use switched
 19-62 access rates in each market in accordance with this section.

19-63 (b) On the date the company is classified as a transitioning
 19-64 company, the company shall reduce both the company's originating
 19-65 and terminating per minute of use switched access rates in each
 19-66 market by an amount equal to the lesser of:

19-67 (1) 25 percent of the difference in the company's rates
 19-68 in effect on the day before the date the company was classified, and
 19-69 the company's respective federal originating and terminating per

20-1 minute of use switched access rates in effect on that date; or

20-2 (2) an amount derived by multiplying that difference
 20-3 by a percentage derived by dividing the number of the company's
 20-4 markets that are not regulated on the date the company is classified
 20-5 as a transitioning company by the total number of the company's
 20-6 markets on December 30, 2005.

20-7 (c) On the first anniversary of the date the company is
 20-8 classified as a transitioning company, the company shall reduce
 20-9 both the company's originating and terminating per minute of use
 20-10 switched access rates in each market by an amount equal to the
 20-11 lesser of:

20-12 (1) 25 percent of the difference in the company's rates
 20-13 in effect on the day before the date the company was classified, and
 20-14 the company's respective federal originating and terminating per
 20-15 minute of use switched access rates in effect on that date; or

20-16 (2) an amount derived by multiplying that difference
 20-17 by a percentage derived by dividing the number of the company's
 20-18 markets that were deregulated in the prior 12 months by the total
 20-19 number of the company's markets on December 30, 2005.

20-20 (d) On the second anniversary of the date the company is
 20-21 classified as a transitioning company, the company shall reduce
 20-22 both the company's originating and terminating per minute of use
 20-23 switched access rates in each market by an amount equal to the
 20-24 lesser of:

20-25 (1) 25 percent of the difference in the company's rates
 20-26 in effect on the day before the date the company was classified, and
 20-27 the company's respective federal originating and terminating per
 20-28 minute of use switched access rates in effect on that date; or

20-29 (2) an amount derived by multiplying that difference
 20-30 by a percentage derived by dividing the number of the company's
 20-31 markets that were deregulated in the prior 12 months by the total
 20-32 number of the company's markets on December 30, 2005.

20-33 (e) On the third anniversary of the date the company is
 20-34 classified as a transitioning company and each anniversary
 20-35 thereafter, the company shall reduce both the company's originating
 20-36 and terminating per minute of use switched access rates in each
 20-37 market by an amount derived by multiplying the difference in the
 20-38 company's rates in effect on the day before the date the company was
 20-39 classified as a transitioning company, and the company's respective
 20-40 federal originating and terminating per minute of use switched
 20-41 access rates in effect on that date by a percentage derived by
 20-42 dividing the number of the company's markets that were deregulated
 20-43 in the prior 12 months by the total number of the company's markets
 20-44 on December 30, 2005, except that a transitioning company shall be
 20-45 required to reduce both the company's originating and terminating
 20-46 per minute of use switched access charges to parity with the
 20-47 company's respective federal originating and terminating per
 20-48 minute of use switched access charges if more than 75 percent of the
 20-49 transitioning company's markets are not regulated on July 1 of 2009
 20-50 or any succeeding year.

20-51 (f) After reducing the rates under Subsection (e), a
 20-52 transitioning company shall maintain parity with the company's
 20-53 federal originating and terminating per minute of use switched
 20-54 access rates. If the company's federal originating and terminating
 20-55 per minute of use switched access rates are changed, the company
 20-56 shall change the company's per minute of use switched access rates
 20-57 in each market as necessary to re-achieve parity with the company's
 20-58 federal originating and terminating per minute of use switched
 20-59 access rates.

20-60 Sec. 65.205. MAINTENANCE OF REDUCTION OR PARITY.

20-61 (a) After a deregulated or transitioning company reduces the
 20-62 company's rates under this subchapter, the company may not increase
 20-63 those rates above the applicable rates prescribed by this
 20-64 subchapter.

20-65 (b) If a transitioning company's federal per minute of use
 20-66 switched access rates are reduced, the company shall reduce the
 20-67 company's per minute of use switched access rates to not more than
 20-68 the applicable rates prescribed by this subchapter.

20-69 (c) Notwithstanding Subsections (a) and (b), a deregulated

21-1 or transitioning company may decrease the company's per minute of
 21-2 use switched access rates to amounts that are less than the
 21-3 applicable rates prescribed by this subchapter.

21-4 [Sections 65.206-65.250 reserved for expansion]

21-5 SUBCHAPTER F. LEGISLATIVE OVERSIGHT COMMITTEE

21-6 Sec. 65.251. OVERSIGHT COMMITTEE. (a) In this subchapter,
 21-7 "committee" means the telecommunications competitiveness
 21-8 legislative oversight committee.

21-9 (b) The committee is composed of nine members as follows:

21-10 (1) the chair of the Senate Committee on Business and
 21-11 Commerce;

21-12 (2) the chair of the House Committee on Regulated
 21-13 Industries;

21-14 (3) three members of the senate appointed by the
 21-15 lieutenant governor;

21-16 (4) three members of the house of representatives
 21-17 appointed by the speaker of the house of representatives; and

21-18 (5) the chief executive of the Office of Public
 21-19 Utility Counsel.

21-20 (c) An appointed member of the committee serves at the
 21-21 pleasure of the appointing official.

21-22 Sec. 65.252. COMMITTEE DUTIES. (a) The committee shall
 21-23 conduct joint public hearings with the commission at least annually
 21-24 regarding the introduction of full competition to
 21-25 telecommunications services in this state.

21-26 (b) The commission shall:

21-27 (1) collect and compile information from all
 21-28 telecommunications providers as necessary to conduct a hearing
 21-29 under this section; and

21-30 (2) maintain the confidentiality of information
 21-31 collected under this section that is claimed to be confidential for
 21-32 competitive purposes.

21-33 (c) Information that is claimed to be confidential under
 21-34 Subsection (b) is exempt from disclosure under Chapter 552,
 21-35 Government Code.

21-36 (d) The commission shall provide to the committee
 21-37 information regarding rules relating to telecommunications
 21-38 deregulation proposed by the commission. The committee may submit
 21-39 comments to the commission on those proposed rules.

21-40 (e) The committee shall monitor the effectiveness of
 21-41 telecommunications deregulation, including the fairness of rates,
 21-42 the quality of service, and the effect of regulation on the normal
 21-43 forces of competition.

21-44 (f) The committee may request reports and other information
 21-45 from the commission as necessary to carry out this subchapter.

21-46 (g) Not later than November 15 of each even-numbered year,
 21-47 the committee shall report to the governor, lieutenant governor,
 21-48 and speaker of the house of representatives on the committee's
 21-49 activities under this subchapter. The report must include:

21-50 (1) an analysis of any problems caused by
 21-51 telecommunications deregulation; and

21-52 (2) recommendations for any legislative action
 21-53 necessary to address those problems and to further competition
 21-54 within the telecommunications industry.

21-55 SECTION 27. Subtitle C, Title 2, Utilities Code, is amended
 21-56 by adding Chapter 66 to read as follows:

21-57 CHAPTER 66. STATE-ISSUED CABLE AND VIDEO FRANCHISE

21-58 Sec. 66.001. FRANCHISING AUTHORITY. The commission shall
 21-59 be designated as the franchising authority for a state-issued
 21-60 franchise for the provision of cable service or video service.

21-61 Sec. 66.002. DEFINITIONS. In this chapter:

21-62 (1) "Actual incremental cost" means only current
 21-63 out-of-pocket expenses for labor, equipment repair, equipment
 21-64 replacement, and tax expenses directly associated with the labor or
 21-65 the equipment of a service provider that is necessarily and
 21-66 directly used to provide what were, under a superseded franchise,
 21-67 in-kind services, exclusive of any profit or overhead such as
 21-68 depreciation, amortization, or administrative expense.

21-69 (2) "Cable service" is defined as set forth in 47

22-1 U.S.C. Section 522(6).

22-2 (3) "Cable service provider" means a person who
 22-3 provides cable service.

22-4 (4) "Communications network" means a component or
 22-5 facility that is, wholly or partly, physically located within a
 22-6 public right-of-way and that is used to provide video programming,
 22-7 cable, voice, or data services.

22-8 (5) "Franchise" means an initial authorization, or
 22-9 renewal of an authorization, issued by a franchising authority,
 22-10 regardless of whether the authorization is designated as a
 22-11 franchise, permit, license, resolution, contract, certificate,
 22-12 agreement, or otherwise, that authorizes the construction and
 22-13 operation of a cable or video services network in the public
 22-14 rights-of-way.

22-15 (6)(A) "Gross revenues" means all consideration of any
 22-16 kind or nature including without limitation cash, credits,
 22-17 property, and in-kind contributions (services or goods) derived by
 22-18 the holder of a state-issued certificate of franchise authority
 22-19 from the operation of the cable service provider's or the video
 22-20 service provider's network to provide cable service or video
 22-21 service within the municipality. Gross revenue shall include all
 22-22 consideration paid to the holder of a state-issued certificate of
 22-23 franchise authority and its affiliates (to the extent either is
 22-24 acting as a provider of a cable service or video service as
 22-25 authorized by this chapter), which shall include but not be limited
 22-26 to the following: (i) all fees charged to subscribers for any and
 22-27 all cable service or video service provided by the holder of a
 22-28 state-issued certificate of franchise authority; (ii) any fee
 22-29 imposed on the holder of a state-issued certificate of franchise
 22-30 authority by this chapter that is passed through and paid by
 22-31 subscribers (including without limitation the franchise fee set
 22-32 forth in this chapter); and (iii) compensation received by the
 22-33 holder of a state-issued certificate of franchise authority or its
 22-34 affiliates that is derived from the operation of the holder of a
 22-35 state-issued certificate of franchise authority's network to
 22-36 provide cable service or video service with respect to commissions
 22-37 that are paid to the holder of a state-issued certificate of
 22-38 franchise authority as compensation for promotion or exhibition of
 22-39 any products or services on the holder of a state-issued
 22-40 certificate of franchise authority's network, such as a "home
 22-41 shopping" or a similar channel, subject to Paragraph (B)(v). Gross
 22-42 revenue includes a pro rata portion of all revenue derived by the
 22-43 holder of a state-issued certificate of franchise authority or its
 22-44 affiliates pursuant to compensation arrangements for advertising
 22-45 derived from the operation of the holder of a state-issued
 22-46 certificate of franchise authority's network to provide cable
 22-47 service or the video service within a municipality, subject to
 22-48 Paragraph (B)(iii). The allocation shall be based on the number of
 22-49 subscribers in the municipality divided by the total number of
 22-50 subscribers in relation to the relevant regional or national
 22-51 compensation arrangement. Advertising commissions paid to third
 22-52 parties shall not be netted against advertising revenue included in
 22-53 gross revenue. Revenue of an affiliate derived from the
 22-54 affiliate's provision of cable service or the video service shall
 22-55 be gross revenue to the extent the treatment of such revenue as
 22-56 revenue of the affiliate and not of the holder of a state-issued
 22-57 certificate of franchise authority has the effect (whether
 22-58 intentional or unintentional) of evading the payment of fees which
 22-59 would otherwise be paid to the municipality. In no event shall
 22-60 revenue of an affiliate be gross revenue to the holder of a
 22-61 state-issued certificate of franchise authority if such revenue is
 22-62 otherwise subject to fees to be paid to the municipality.

22-63 (B) For purposes of this section, "gross
 22-64 revenues" does not include:

22-65 (i) any revenue not actually received, even
 22-66 if billed, such as bad debt;

22-67 (ii) non-cable services or non-video
 22-68 services revenues received by any affiliate or any other person in
 22-69 exchange for supplying goods or services used by the holder of a

23-1 state-issued certificate of franchise authority to provide cable
 23-2 service or video service;

23-3 (iii) refunds, rebates, or discounts made
 23-4 to subscribers, leased access providers, advertisers, or a
 23-5 municipality;

23-6 (iv) any revenues from services classified
 23-7 as non-cable service or non-video service under federal law
 23-8 including without limitation revenue received from
 23-9 telecommunications services; revenue received from information
 23-10 services (but not excluding cable services or video services); and
 23-11 any other revenues attributed by the holder of a state-issued
 23-12 certificate of franchise authority to non-cable service or
 23-13 non-video service in accordance with Federal Communications
 23-14 Commission or commission rules, regulations, standards, or orders;

23-15 (v) any revenue paid by subscribers to home
 23-16 shopping programmers directly from the sale of merchandise through
 23-17 any home shopping channel offered as part of the cable services or
 23-18 video services, but not excluding any commissions that are paid to
 23-19 the holder of a state-issued certificate of franchise authority as
 23-20 compensation for promotion or exhibition of any products or
 23-21 services on the holder of a state-issued certificate of franchise
 23-22 authority's network, such as a "home shopping" or a similar
 23-23 channel;

23-24 (vi) the sale of cable services or video
 23-25 services for resale in which the purchaser is required to collect
 23-26 this chapter's fees from the purchaser's customer. Nothing under
 23-27 this chapter is intended to limit state's rights pursuant to 47
 23-28 U.S.C. Section 542(h);

23-29 (vii) the provision of cable services or
 23-30 video services to customers at no charge, as required or allowed by
 23-31 this chapter, including without limitation the provision of cable
 23-32 services or video services to public institutions, as required or
 23-33 permitted in this chapter, including without limitation public
 23-34 schools or governmental entities, as required or permitted in this
 23-35 chapter;

23-36 (viii) any tax of general applicability
 23-37 imposed upon the holder of a state-issued certificate of franchise
 23-38 authority or upon subscribers by a city, state, federal, or any
 23-39 other governmental entity and required to be collected by the
 23-40 holder of a state-issued certificate of franchise authority and
 23-41 remitted to the taxing entity (including, but not limited to, sales
 23-42 and use tax, gross receipts tax, excise tax, utility users tax,
 23-43 public service tax, communication taxes, and fees not imposed by
 23-44 this chapter);

23-45 (ix) any forgone revenue from the holder of
 23-46 a state-issued certificate of franchise authority's provision of
 23-47 free or reduced cost cable services or video services to any person
 23-48 including without limitation employees of the holder of a
 23-49 state-issued certificate of franchise authority, to the
 23-50 municipality and other public institutions or other institutions as
 23-51 allowed in this chapter; provided, however, that any forgone
 23-52 revenue which the holder of a state-issued certificate of franchise
 23-53 authority chooses not to receive in exchange for trades, barters,
 23-54 services, or other items of value shall be included in gross
 23-55 revenue;

23-56 (x) sales of capital assets or sales of
 23-57 surplus equipment that is not used by the purchaser to receive cable
 23-58 services or video services from the holder of a state-issued
 23-59 certificate of franchise authority;

23-60 (xi) directory or Internet advertising
 23-61 revenue including, but not limited to, yellow pages, white pages,
 23-62 banner advertisement, and electronic publishing; and

23-63 (xii) reimbursement by programmers of
 23-64 marketing costs incurred by the holder of a state-issued franchise
 23-65 for the introduction of new programming that exceed the actual
 23-66 costs.

23-67 (C) For purposes of this definition, a provider's
 23-68 network consists solely of the optical spectrum wavelengths,
 23-69 bandwidth, or other current or future technological capacity used

24-1 for the transmission of video programming over wireline directly to
 24-2 subscribers within the geographic area within the municipality as
 24-3 designated by the provider in its franchise.

24-4 (7) "Incumbent cable service provider" means the cable
 24-5 service provider serving the largest number of cable subscribers in
 24-6 a particular municipal franchise area on September 1, 2005.

24-7 (8) "Public right-of-way" means the area on, below, or
 24-8 above a public roadway, highway, street, public sidewalk, alley,
 24-9 waterway, or utility easement in which a municipality has an
 24-10 interest.

24-11 (9) "Video programming" means programming provided
 24-12 by, or generally considered comparable to programming provided by,
 24-13 a television broadcast station, as set forth in 47 U.S.C. Section
 24-14 522(20).

24-15 (10) "Video service" means video programming services
 24-16 provided through wireline facilities located at least in part in
 24-17 the public right-of-way without regard to delivery technology,
 24-18 including Internet protocol technology. This definition does not
 24-19 include any video service provided by a commercial mobile service
 24-20 provider as defined in 47 U.S.C. Section 332(d).

24-21 (11) "Video service provider" means a video
 24-22 programming distributor that distributes video programming
 24-23 services through wireline facilities located at least in part in
 24-24 the public right-of-way without regard to delivery technology.
 24-25 This term does not include a cable service provider.

24-26 Sec. 66.003. STATE AUTHORIZATION TO PROVIDE CABLE SERVICE
 24-27 OR VIDEO SERVICE. (a) An entity or person seeking to provide cable
 24-28 service or video service in this state after September 1, 2005,
 24-29 shall file an application for a state-issued certificate of
 24-30 franchise authority with the commission as required by this
 24-31 section. An entity providing cable service or video service under a
 24-32 franchise agreement with a municipality is not subject to this
 24-33 subsection with respect to such municipality until the franchise
 24-34 agreement expires, except as provided by Section 66.004.

24-35 (a-1) The commission shall notify an applicant for a
 24-36 state-issued certificate of franchise authority whether the
 24-37 applicant's affidavit described by Subsection (b) is complete
 24-38 before the 15th business day after the applicant submits the
 24-39 affidavit.

24-40 (b) The commission shall issue a certificate of franchise
 24-41 authority to offer cable service or video service before the 17th
 24-42 business day after receipt of a completed affidavit submitted by
 24-43 the applicant and signed by an officer or general partner of the
 24-44 applicant affirming:

24-45 (1) that the applicant has filed or will timely file
 24-46 with the Federal Communications Commission all forms required by
 24-47 that agency in advance of offering cable service or video service in
 24-48 this state;

24-49 (2) that the applicant agrees to comply with all
 24-50 applicable federal and state statutes and regulations;

24-51 (3) that the applicant agrees to comply with all
 24-52 applicable municipal regulations regarding the use and occupation
 24-53 of public rights-of-way in the delivery of the cable service or
 24-54 video service, including the police powers of the municipalities in
 24-55 which the service is delivered;

24-56 (4) a description of the service area footprint to be
 24-57 served within the municipality, if applicable, otherwise the
 24-58 municipality to be served by the applicant, which may include
 24-59 certain designations of unincorporated areas, which description
 24-60 shall be updated by the applicant prior to the expansion of cable
 24-61 service or video service to a previously undesignated service area
 24-62 and, upon such expansion, notice to the commission of the service
 24-63 area to be served by the applicant; and

24-64 (5) the location of the applicant's principal place of
 24-65 business and the names of the applicant's principal executive
 24-66 officers.

24-67 (c) The certificate of franchise authority issued by the
 24-68 commission shall contain:

24-69 (1) a grant of authority to provide cable service or

25-1 video service as requested in the application;

25-2 (2) a grant of authority to use and occupy the public
 25-3 rights-of-way in the delivery of that service, subject to the laws
 25-4 of this state, including the police powers of the municipalities in
 25-5 which the service is delivered; and

25-6 (3) a statement that the grant of authority is subject
 25-7 to lawful operation of the cable service or video service by the
 25-8 applicant or its successor in interest.

25-9 (d) The certificate of franchise authority issued by the
 25-10 commission is fully transferable to any successor in interest to
 25-11 the applicant to which it is initially granted. A notice of
 25-12 transfer shall be filed with the commission and the relevant
 25-13 municipality within 14 business days of the completion of such
 25-14 transfer.

25-15 (e) The certificate of franchise authority issued by the
 25-16 commission may be terminated by the cable service provider or video
 25-17 service provider by submitting notice to the commission.

25-18 Sec. 66.004. ELIGIBILITY FOR COMMISSION-ISSUED FRANCHISE.

25-19 (a) A cable service provider or a video service provider that
 25-20 currently has or had previously received a franchise to provide
 25-21 cable service or video service with respect to such municipalities
 25-22 is not eligible to seek a state-issued certificate of franchise
 25-23 authority under this chapter as to those municipalities until the
 25-24 expiration date of the existing franchise agreement, except as
 25-25 provided by Subsections (b) and (c).

25-26 (b) Beginning September 1, 2005, a cable service provider or
 25-27 video service provider that is not the incumbent cable service
 25-28 provider and serves fewer than 40 percent of the total cable
 25-29 customers in a particular municipal franchise area may elect to
 25-30 terminate that municipal franchise and seek a state-issued
 25-31 certificate of franchise authority by providing written notice to
 25-32 the commission and the affected municipality before January 1,
 25-33 2006. The municipal franchise is terminated on the date the
 25-34 commission issues the state-issued certificate of franchise
 25-35 authority.

25-36 (c) A cable service provider that serves fewer than 40
 25-37 percent of the total cable customers in a municipal franchise area
 25-38 and that elects under Subsection (b) to terminate an existing
 25-39 municipal franchise is responsible for remitting to the affected
 25-40 municipality before the 91st day after the date the municipal
 25-41 franchise is terminated any accrued but unpaid franchise fees due
 25-42 under the terminated franchise. If the cable service provider has
 25-43 credit remaining from prepaid franchise fees, the provider may
 25-44 deduct the amount of the remaining credit from any future fees or
 25-45 taxes it must pay to the municipality, either directly or through
 25-46 the comptroller.

25-47 (d) For purposes of this section, a cable service provider
 25-48 or video service provider will be deemed to have or have had a
 25-49 franchise to provide cable service or video service in a specific
 25-50 municipality if any affiliates or successor entity of the cable or
 25-51 video provider has or had a franchise agreement granted by that
 25-52 specific municipality.

25-53 (e) The terms "affiliates or successor entity" in this
 25-54 section shall include but not be limited to any entity receiving,
 25-55 obtaining, or operating under a municipal cable or video franchise
 25-56 through merger, sale, assignment, restructuring, or any other type
 25-57 of transaction.

25-58 (f) Except as provided in this chapter, nothing in this
 25-59 chapter is intended to abrogate, nullify, or adversely affect in
 25-60 any way the contractual rights, duties, and obligations existing
 25-61 and incurred by a cable service provider or a video service provider
 25-62 before the enactment of this chapter, and owed or owing to any
 25-63 private person, firm, partnership, corporation, or other entity
 25-64 including without limitation those obligations measured by and
 25-65 related to the gross revenue hereafter received by the holder of a
 25-66 state-issued certificate of franchise authority for services
 25-67 provided in the geographic area to which such prior franchise or
 25-68 permit applies. All liens, security interests, royalties, and
 25-69 other contracts, rights, and interests in effect on September 1,

2005, shall continue in full force and effect, without the necessity for renewal, extension, or continuance, and shall be paid and performed by the holder of a state-issued certificate of franchise authority, and shall apply as though the revenue generated by the holder of a state-issued certificate of franchise authority continued to be generated pursuant to the permit or franchise issued by the prior local franchising authority or municipality within the geographic area to which the prior permit or franchise applies. It shall be a condition to the issuance and continuance of a state-issued certificate of franchise authority that the private contractual rights and obligations herein described continue to be honored, paid, or performed to the same extent as though the cable service provider continued to operate under its prior franchise or permit, for the duration of such state-issued certificate of franchise authority and any renewals or extensions thereof, and that the applicant so agrees. Any person, firm, partnership, corporation, or other entity holding or claiming rights herein reserved may enforce same by an action brought in a court of competent jurisdiction.

Sec. 66.005. FRANCHISE FEE. (a) The holder of a state-issued certificate of franchise authority shall pay each municipality in which it provides cable service or video service a franchise fee of five percent based upon the definition of gross revenues as set forth in this chapter. That same franchise fee structure shall apply to any unincorporated areas that are annexed by a municipality after the effective date of the state-issued certificate of franchise authority.

(b) The franchise fee payable under this section is to be paid quarterly, within 45 days after the end of the quarter for the preceding calendar quarter. Each payment shall be accompanied by a summary explaining the basis for the calculation of the fee. A municipality may review the business records of the cable service provider or video service provider to the extent necessary to ensure compensation in accordance with Subsection (a). Each party shall bear the party's own costs of the examination. A municipality may, in the event of a dispute concerning compensation under this section, bring an action in a court of competent jurisdiction.

(c) The holder of a state-issued certificate of franchise authority may recover from the provider's customers any fee imposed by this chapter.

Sec. 66.006. IN-KIND CONTRIBUTIONS TO MUNICIPALITY. (a) Until the expiration of the incumbent cable service provider's agreement, the holder of a state-issued certificate of franchise authority shall pay a municipality in which it is offering cable service or video service the same cash payments on a per subscriber basis as required by the incumbent cable service provider's franchise agreement. The holder of a state-issued certificate of franchise authority shall report quarterly to the municipality the total number of subscribers served within the municipality. The amount paid by the holder of a state-issued certificate of franchise authority shall be calculated quarterly by the municipality by multiplying the amount of cash payment under the incumbent cable service provider's franchise agreement by a number derived by dividing the number of subscribers served by a video service provider or cable service provider by the total number of video or cable service subscribers in the municipality. Such pro rata payments are to be paid quarterly to the municipality within 45 days after the end of the quarter for the preceding calendar quarter.

(b) On the expiration of the incumbent cable service provider's agreement, the holder of a state-issued certificate of franchise authority shall pay a municipality in which it is offering cable service or video service one percent of the provider's gross revenues, as defined by this chapter, or at the municipality's election, the per subscriber fee that was paid to the municipality under the expired incumbent cable service provider's agreement, in lieu of in-kind compensation and grants. Payments under this subsection shall be paid in the same manner as outlined in Section 66.005(b).

27-1 (c) All fees paid to municipalities under this section are
 27-2 paid in accordance with 47 U.S.C. Sections 531 and 541(a)(4)(B) and
 27-3 may be used by the municipality as allowed by federal law; further,
 27-4 these payments are not chargeable as a credit against the franchise
 27-5 fee payments authorized under this chapter.

27-6 (d) The following services shall continue to be provided by
 27-7 the cable provider that was furnishing services pursuant to its
 27-8 municipal cable franchise until January 1, 2008, or until the term
 27-9 of the franchise was to expire, whichever is later:

27-10 (1) institutional network capacity, however defined
 27-11 or referred to in the municipal cable franchise but generally
 27-12 referring to a private line data network capacity for use by the
 27-13 municipality for noncommercial purposes, shall continue to be
 27-14 provided at the same capacity as was provided to the municipality
 27-15 prior to the date of the termination, provided that the
 27-16 municipality will compensate the provider for the actual
 27-17 incremental cost of the capacity; and

27-18 (2) cable services to community public buildings, such
 27-19 as municipal buildings and public schools, shall continue to be
 27-20 provided to the same extent provided immediately prior to the date
 27-21 of the termination until January 1, 2008, after which a provider
 27-22 that provides the services may deduct from the franchise fee to be
 27-23 paid to the municipality an amount equal to the actual incremental
 27-24 cost of the services if the municipality requires the services
 27-25 after that date. Such cable service generally refers to the
 27-26 existing cable drop connections to such facilities and the tier of
 27-27 cable service provided pursuant to the franchise at the time of the
 27-28 termination.

27-29 Sec. 66.007. BUILD-OUT. The holder of a state-issued
 27-30 certificate of franchise authority shall not be required to comply
 27-31 with mandatory build-out provisions.

27-32 Sec. 66.008. CUSTOMER SERVICE STANDARDS. The holder of a
 27-33 state-issued certificate of franchise authority shall comply with
 27-34 customer service requirements consistent with 47 C.F.R. Section
 27-35 76.309(c) until there are two or more providers offering service,
 27-36 excluding direct-to-home satellite service, in the relevant
 27-37 municipality.

27-38 Sec. 66.009. PUBLIC, EDUCATIONAL, AND GOVERNMENTAL ACCESS
 27-39 CHANNELS. (a) Not later than 120 days after a request by a
 27-40 municipality, the holder of a state-issued certificate of franchise
 27-41 authority shall provide the municipality with capacity in its
 27-42 communications network to allow public, educational, and
 27-43 governmental (PEG) access channels for noncommercial programming.

27-44 (b) The holder of a state-issued certificate of franchise
 27-45 authority shall provide no fewer than the number of PEG access
 27-46 channels a municipality has activated under the incumbent cable
 27-47 service provider's franchise agreement as of September 1, 2005.

27-48 (c) If a municipality did not have PEG access channels as of
 27-49 September 1, 2005, the cable service provider or video service
 27-50 provider shall furnish:

27-51 (1) up to three PEG channels for a municipality with a
 27-52 population of at least 50,000; and

27-53 (2) up to two PEG channels for a municipality with a
 27-54 population of less than 50,000.

27-55 (d) Any PEG channel provided pursuant to this section that
 27-56 is not utilized by the municipality for at least eight hours a day
 27-57 shall no longer be made available to the municipality, but may be
 27-58 programmed at the cable service provider's or video service
 27-59 provider's discretion. At such time as the municipality can
 27-60 certify to the cable service provider or video service provider a
 27-61 schedule for at least eight hours of daily programming, the cable
 27-62 service provider or video service provider shall restore the
 27-63 previously lost channel but shall be under no obligation to carry
 27-64 that channel on a basic or analog tier.

27-65 (e) In the event a municipality has not utilized the minimum
 27-66 number of access channels as permitted by Subsection (c), access to
 27-67 the additional channel capacity allowed in Subsection (c) shall be
 27-68 provided upon 90 days' written notice if the municipality meets the
 27-69 following standard: if a municipality has one active PEG channel

28-1 and wishes to activate an additional PEG channel, the initial
 28-2 channel shall be considered to be substantially utilized when 12
 28-3 hours are programmed on that channel each calendar day. In
 28-4 addition, at least 40 percent of the 12 hours of programming for
 28-5 each business day on average over each calendar quarter must be
 28-6 nonrepeat programming. Nonrepeat programming shall include the
 28-7 first three video-castings of a program. If a municipality is
 28-8 entitled to three PEG channels under Subsection (c) and has in
 28-9 service two active PEG channels, each of the two active channels
 28-10 shall be considered to be substantially utilized when 12 hours are
 28-11 programmed on each channel each calendar day and at least 50 percent
 28-12 of the 12 hours of programming for each business day on average over
 28-13 each calendar quarter is nonrepeat programming for three
 28-14 consecutive calendar quarters.

28-15 (f) The operation of any PEG access channel provided
 28-16 pursuant to this section shall be the responsibility of the
 28-17 municipality receiving the benefit of such channel, and the holder
 28-18 of a state-issued certificate of franchise authority bears only the
 28-19 responsibility for the transmission of such channel. The holder of
 28-20 a state-issued certificate of franchise authority shall be
 28-21 responsible for providing the connectivity to each PEG access
 28-22 channel distribution point up to the first 200 feet.

28-23 (g) The municipality must ensure that all transmissions,
 28-24 content, or programming to be transmitted over a channel or
 28-25 facility by a holder of a state-issued certificate of franchise
 28-26 authority are provided or submitted to the cable service provider
 28-27 or video service provider in a manner or form that is capable of
 28-28 being accepted and transmitted by a provider, without requirement
 28-29 for additional alteration or change in the content by the provider,
 28-30 over the particular network of the cable service provider or video
 28-31 service provider, which is compatible with the technology or
 28-32 protocol utilized by the cable service provider or video service
 28-33 provider to deliver services.

28-34 (h) Where technically feasible, the holder of a
 28-35 state-issued certificate of franchise authority and an incumbent
 28-36 cable service provider shall use reasonable efforts to interconnect
 28-37 their cable or video systems for the purpose of providing PEG
 28-38 programming. Interconnection may be accomplished by direct cable,
 28-39 microwave link, satellite, or other reasonable method of
 28-40 connection. Holders of a state-issued certificate of franchise
 28-41 authority and incumbent cable service providers shall negotiate in
 28-42 good faith and incumbent cable service providers may not withhold
 28-43 interconnection of PEG channels.

28-44 (i) A court of competent jurisdiction shall have exclusive
 28-45 jurisdiction to enforce any requirement under this section.

28-46 Sec. 66.010. NONDISCRIMINATION BY MUNICIPALITY. (a) A
 28-47 municipality shall allow the holder of a state-issued certificate
 28-48 of franchise authority to install, construct, and maintain a
 28-49 communications network within a public right-of-way and shall
 28-50 provide the holder of a state-issued certificate of franchise
 28-51 authority with open, comparable, nondiscriminatory, and
 28-52 competitively neutral access to the public right-of-way. All use
 28-53 of a public right-of-way by the holder of a state-issued
 28-54 certificate of franchise authority is nonexclusive and subject to
 28-55 Section 66.011.

28-56 (b) A municipality may not discriminate against the holder
 28-57 of a state-issued certificate of franchise authority regarding:

28-58 (1) the authorization or placement of a communications
 28-59 network in a public right-of-way;

28-60 (2) access to a building; or

28-61 (3) a municipal utility pole attachment term.

28-62 Sec. 66.011. MUNICIPAL POLICE POWER; OTHER AUTHORITY.

28-63 (a) A municipality may enforce police power-based regulations in
 28-64 the management of a public right-of-way that apply to the holder of
 28-65 a state-issued certificate of franchise authority within the
 28-66 municipality. A municipality may enforce police power-based
 28-67 regulations in the management of the activities of the holder of a
 28-68 state-issued certificate of franchise authority to the extent that
 28-69 they are reasonably necessary to protect the health, safety, and

29-1 welfare of the public. Police power-based regulation of the holder
 29-2 of a state-issued certificate of franchise authority's use of the
 29-3 public right-of-way must be competitively neutral and may not be
 29-4 unreasonable or discriminatory. A municipality may not impose on
 29-5 activities of the holder of a state-issued certificate of franchise
 29-6 authority a requirement:

29-7 (1) that particular business offices be located in the
 29-8 municipality;

29-9 (2) regarding the filing of reports and documents with
 29-10 the municipality that are not required by state or federal law and
 29-11 that are not related to the use of the public right-of-way except
 29-12 that a municipality may request maps and records maintained in the
 29-13 ordinary course of business for purposes of locating the portions
 29-14 of a communications network that occupy public rights-of-way. Any
 29-15 maps or records of the location of a communications network
 29-16 received by a municipality shall be confidential and exempt from
 29-17 disclosure under Chapter 552, Government Code, and may be used by a
 29-18 municipality only for the purpose of planning and managing
 29-19 construction activity in the public right-of-way. A municipality
 29-20 may not request information concerning the capacity or technical
 29-21 configuration of the holder of a state-issued certificate of
 29-22 franchise authority's facilities;

29-23 (3) for the inspection of the holder of a state-issued
 29-24 certificate of franchise authority's business records except to
 29-25 extent permitted under Section 66.005(b);

29-26 (4) for the approval of transfers of ownership or
 29-27 control of the holder of a state-issued certificate of franchise
 29-28 authority's business, except that a municipality may require that
 29-29 the holder of a state-issued certificate of franchise authority
 29-30 maintain a current point of contact and provide notice of a transfer
 29-31 within a reasonable time; or

29-32 (5) that the holder of a state-issued certificate of
 29-33 franchise authority that is self-insured under the provisions of
 29-34 state law obtain insurance or bonding for any activities within the
 29-35 municipality, except that a self-insured provider shall provide
 29-36 substantially the same defense and claims processing as an insured
 29-37 provider. A bond may not be required from a provider for any work
 29-38 consisting of aerial construction except that a reasonable bond may
 29-39 be required of a provider that cannot demonstrate a record of at
 29-40 least four years' performance of work in any municipal public
 29-41 right-of-way free of currently unsatisfied claims by a municipality
 29-42 for damage to the right-of-way.

29-43 (b) Notwithstanding any other law, a municipality may
 29-44 require the issuance of a construction permit, without cost, to the
 29-45 holder of a state-issued certificate of franchise authority that is
 29-46 locating facilities in or on a public right-of-way in the
 29-47 municipality. The terms of the permit shall be consistent with
 29-48 construction permits issued to other persons excavating in a public
 29-49 right-of-way.

29-50 (c) In the exercise of its lawful regulatory authority, a
 29-51 municipality shall promptly process all valid and administratively
 29-52 complete applications of the holder of a state-issued certificate
 29-53 of franchise authority for a permit, license, or consent to
 29-54 excavate, set poles, locate lines, construct facilities, make
 29-55 repairs, affect traffic flow, or obtain zoning or subdivision
 29-56 regulation approvals or other similar approvals. A municipality
 29-57 shall make every reasonable effort not to delay or unduly burden the
 29-58 provider in the timely conduct of the provider's business.

29-59 (d) If there is an emergency necessitating response work or
 29-60 repair, the holder of a state-issued certificate of franchise
 29-61 authority may begin the repair or emergency response work or take
 29-62 any action required under the circumstances without prior approval
 29-63 from the affected municipality, if the holder of a state-issued
 29-64 certificate of franchise authority notifies the municipality as
 29-65 promptly as possible after beginning the work and later obtains any
 29-66 approval required by a municipal ordinance applicable to emergency
 29-67 response work.

29-68 (e) The commission shall have no jurisdiction to review such
 29-69 police power-based regulations and ordinances adopted by a

30-1 municipality to manage the public rights-of-way.

30-2 Sec. 66.012. INDEMNITY IN CONNECTION WITH RIGHT-OF-WAY;
 30-3 NOTICE OF LIABILITY. (a) The holder of a state-issued certificate
 30-4 of franchise authority shall indemnify and hold a municipality and
 30-5 its officers and employees harmless against any and all claims,
 30-6 lawsuits, judgments, costs, liens, losses, expenses, fees
 30-7 (including reasonable attorney's fees and costs of defense),
 30-8 proceedings, actions, demands, causes of action, liability, and
 30-9 suits of any kind and nature, including personal or bodily injury
 30-10 (including death), property damage, or other harm for which
 30-11 recovery of damages is sought, that is found by a court of competent
 30-12 jurisdiction to be caused solely by the negligent act, error, or
 30-13 omission of the holder of a state-issued certificate of franchise
 30-14 authority or any agent, officer, director, representative,
 30-15 employee, affiliate, or subcontractor of the holder of a
 30-16 state-issued certificate of franchise authority or their
 30-17 respective officers, agents, employees, directors, or
 30-18 representatives, while installing, repairing, or maintaining
 30-19 facilities in a public right-of-way. The indemnity provided by
 30-20 this subsection does not apply to any liability resulting from the
 30-21 negligence of the municipality or its officers, employees,
 30-22 contractors, or subcontractors. If the holder of a state-issued
 30-23 certificate of franchise authority and the municipality are found
 30-24 jointly liable by a court of competent jurisdiction, liability
 30-25 shall be apportioned comparatively in accordance with the laws of
 30-26 this state without, however, waiving any governmental immunity
 30-27 available to the municipality under state law and without waiving
 30-28 any defenses of the parties under state law. This subsection is
 30-29 solely for the benefit of the municipality and the holder of a
 30-30 state-issued certificate of franchise authority and does not create
 30-31 or grant any rights, contractual or otherwise, for or to any other
 30-32 person or entity.

30-33 (b) The holder of a state-issued certificate of franchise
 30-34 authority and a municipality shall promptly advise the other in
 30-35 writing of any known claim or demand against the holder of a
 30-36 state-issued certificate of franchise authority or the
 30-37 municipality related to or arising out of the holder of a
 30-38 state-issued certificate of franchise authority's activities in a
 30-39 public right-of-way.

30-40 (c) The commission shall have no jurisdiction to review such
 30-41 police power-based regulations and ordinances adopted by a
 30-42 municipality to manage the public rights-of-way.

30-43 Sec. 66.013. MUNICIPAL AUTHORITY. In addition to a
 30-44 municipality's authority to exercise its nondiscriminatory police
 30-45 power with respect to public rights-of-way under current law, a
 30-46 municipality's authority to regulate the holder of state-issued
 30-47 certificate of franchise authority is limited to:

30-48 (1) a requirement that the holder of a state-issued
 30-49 certificate of franchise authority who is providing cable service
 30-50 or video service within the municipality register with the
 30-51 municipality and maintain a point of contact;

30-52 (2) the establishment of reasonable guidelines
 30-53 regarding the use of public, educational, and governmental access
 30-54 channels; and

30-55 (3) submitting reports within 30 days on the customer
 30-56 service standards referenced in Section 66.008 if the provider is
 30-57 subject to those standards and has continued and unresolved
 30-58 customer service complaints indicating a clear failure on the part
 30-59 of the holder of a state-issued certificate of franchise authority
 30-60 to comply with the standards.

30-61 Sec. 66.014. DISCRIMINATION PROHIBITED. (a) The purpose
 30-62 of this section is to prevent discrimination among potential
 30-63 residential subscribers.

30-64 (b) A cable service provider or video service provider that
 30-65 has been granted a state-issued certificate of franchise authority
 30-66 may not deny access to service to any group of potential residential
 30-67 subscribers because of the income of the residents in the local area
 30-68 in which such group resides.

30-69 (c) An affected person may seek enforcement of the

31-1 requirements described by Subsection (b) by initiating a proceeding
 31-2 with the commission. A municipality within which the potential
 31-3 residential cable service or video service subscribers referenced
 31-4 in Subsection (b) may be considered an affected person for purposes
 31-5 of this section.

31-6 (d) The holder of a state-issued certificate of franchise
 31-7 authority shall have a reasonable period of time to become capable
 31-8 of providing cable service or video service to all households
 31-9 within the designated franchise area as defined in Section
 31-10 66.003(b)(4) and may satisfy the requirements of this section
 31-11 through the use of an alternative technology that provides
 31-12 comparable content, service, and functionality.

31-13 (e) Notwithstanding any provision of this chapter, the
 31-14 commission has the authority to make the determination regarding
 31-15 the comparability of the technology and the service provided.
 31-16 Notwithstanding any provision of this chapter, the commission has
 31-17 the authority to monitor the deployment of cable services, video
 31-18 services, or alternate technology.

31-19 Sec. 66.015. COMPLIANCE. (a) Should the holder of a
 31-20 state-issued certificate of franchise authority be found by a court
 31-21 of competent jurisdiction to be in noncompliance with the
 31-22 requirements of this chapter, the court shall order the holder a
 31-23 state-issued certificate of franchise authority, within a
 31-24 specified reasonable period of time, to cure such noncompliance.
 31-25 Failure to comply shall subject the holder of the state-issued
 31-26 franchise of franchise authority to penalties as the court shall
 31-27 reasonably impose, up to and including revocation of the
 31-28 state-issued certificate of franchise authority granted under this
 31-29 chapter.

31-30 (b) A municipality within which the provider offers cable
 31-31 service or video service shall be an appropriate party in any such
 31-32 litigation.

31-33 Sec. 66.016. APPLICABILITY OF OTHER LAWS. (a) Nothing in
 31-34 this chapter shall be interpreted to prevent a voice provider,
 31-35 cable service provider or video service provider, or municipality
 31-36 from seeking clarification of its rights and obligations under
 31-37 federal law or to exercise any right or authority under federal or
 31-38 state law.

31-39 (b) Nothing in this chapter shall limit the ability of a
 31-40 municipality under existing law to receive compensation for use of
 31-41 the public rights-of-way from entities determined not to be subject
 31-42 to all or part of this chapter, including but not limited to
 31-43 provider of Internet protocol cable or video services, unless such
 31-44 payments are expressly prohibited by federal law.

31-45 Sec. 66.017. STUDY. (a) The telecommunications
 31-46 competitiveness legislative oversight committee shall conduct a
 31-47 joint interim study with the commission regarding the following:

31-48 (1) appropriate alternative forms of competitively
 31-49 neutral compensation methodology that should flow to
 31-50 municipalities from all sources related to the provision of
 31-51 information services, telecommunication services, cable services,
 31-52 and video services;

31-53 (2) right-of-way access and fees;

31-54 (3) the transition from local franchise authority to
 31-55 state-issued authority, including methods to maintain current
 31-56 municipal revenue streams, including franchise fees and in-kind
 31-57 contributions; continuation of public, educational, and
 31-58 governmental access channels; and build-out requirements; and

31-59 (4) other relevant issues.

31-60 (b) The committee shall report its findings to the
 31-61 lieutenant governor and speaker of the House of Representatives no
 31-62 later than December 31, 2006.

31-63 (c) This section expires January 1, 2007.

31-64 SECTION 28. Section 283.002, Local Government Code, is
 31-65 amended by amending Subdivision (2) and adding Subdivision (7) to
 31-66 read as follows:

31-67 (2) "Certificated telecommunications provider" means
 31-68 a person who has been issued a certificate of convenience and
 31-69 necessity, certificate of operating authority, or service provider

32-1 certificate of operating authority by the commission to offer local
32-2 exchange telephone service or a person who provides voice service.

32-3 (7) "Voice service" means voice communications
32-4 services provided through wireline facilities located at least in
32-5 part in the public right-of-way, without regard to the delivery
32-6 technology, including Internet protocol technology. The term does
32-7 not include voice service provided by a commercial mobile service
32-8 provider as defined by 47 U.S.C. Section 332(d).

32-9 SECTION 29. The following provisions of the Utilities Code
32-10 are repealed:

32-11 (1) Subchapters B through F, Chapter 62; and

32-12 (2) Chapters 61 and 63.

32-13 SECTION 30. The Public Utility Commission of Texas shall
32-14 conduct a study to determine whether Title 2, Utilities Code,
32-15 adequately preserves customer choice in the Internet-enabled
32-16 applications employed in association with broadband service and
32-17 shall report its conclusions and recommendations to the legislature
32-18 not later than January 1, 2007. The study must include
32-19 consultation with and comment from all interested parties.

32-20 SECTION 31. If any provision of this Act or its application
32-21 to any person or circumstance is held invalid, the invalidity does
32-22 not affect other provisions or applications of this Act that can be
32-23 given effect without the invalid provision or application, and to
32-24 this end the provisions of this Act are declared to be severable.

32-25 SECTION 32. This Act takes effect September 1, 2005, if it
32-26 receives a vote of two-thirds of all the members elected to each
32-27 house, as provided by Section 39, Article III, Texas Constitution.
32-28 If this Act does not receive the vote necessary for effect on that
32-29 date, this Act takes effect on the 91st day after the last day of the
32-30 legislative session.

32-31 * * * * *